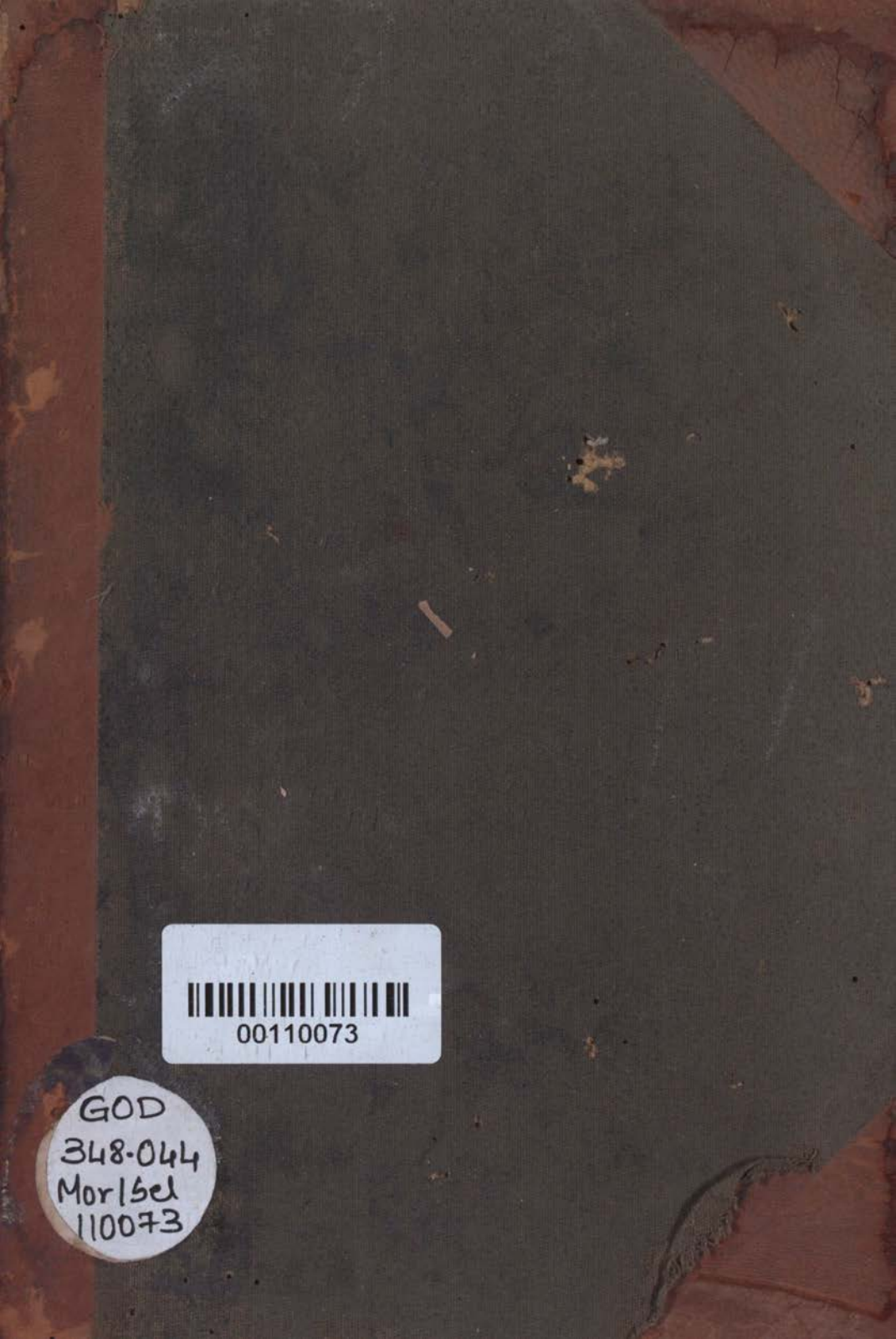
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SELECTED DECISIONS

OF THE

COURT OF

SUDDER DEWANEE ADAWLUT

OF

BOMBAY.

110073

COMPILED BY

JAMES MORRIS,

FIRST ASSISTANT REGISTRAR AND REPORTER OF CASES
TO THE SUDDER ADAWLUT.

PART III. 1853.

Bombay:

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1854.

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ADVERTISEMENT.

THE Sudder Dewanee Adawlut decided 121 Appeals in 1853, of which 39 are reported in the present collection of "Selected Cases," as involving points calculated to establish the law and practice of the Courts.

The Judges present during the year were—

The Honorable Alexander Bell, Esq., Chief Judge, from 1st January to 5th July.

The Honorable John Warden, Esq., from 1st January to 8th July as Puisne Judge, and from 21st July to 31st December as Chief Judge.

P. W. LeGeyt, Esq., Puisne Judge, from 1st January to 3rd March.

Gregor Grant, Esq., Puisne Judge, from 1st January to 3rd March.

Archibald Spens, Esq., Puisne Judge, from 7th March to 31st December.

William Edward Frere, Esq., Puisne Judge, from 4th March to 31st December.

Ashness Remington, Esq., Acting Puisne Judge, from 26th May to 8th July, and Puisne Judge from 9th July to 31st December.

Metcalfe Larken, Esq., Acting Puisne Judge, from 7th March to 31st December.

Edward Montague Suart, Esq., Acting Puisne Judge, from 12th to 28th April.

Sudder Dewance Adawlut,
21*st March* 1854.

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SELECTED DECISIONS

OF THE

SUDDER DEWANEE ADAWLUT, BOMBAY.

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BAPOOSHA wulud SUDASEWSHA .....*Appellant,*

versus

ABAJEE bin JANKOJEE PATEL, deceased,
his Heirs, SUKARAM his Son, a Minor,
by his Mother TUKOO, his Guardian,
and BAPOO ABAJEE'S Nephew .....*Respondents.*

Rupees 155–4–0.

[Held that it was insufficient in Law and practice to declare a Note of Hand invalid because it was written on unstamped paper, though subsequently stamped; because more than five years had elapsed between its date and the institution of the suit; because the interest was oppressive; and because it was only supported by the evidence of the writer and attesting witness.]

1853
15th January.

This suit was instituted by Bapoosha on a promissory note executed by Abajee, deceased, against whose heirs the claim was laid, viz. Sukaram, his son, a minor, and Bapoo, his nephew, the former being represented by his mother, Tukoo, his guardian. The defendants contended that the note was a forgery.

1853
15th January.

The Moonsiff of Khair, by whom the case was tried, recorded as the grounds of his award in favour of Bapoosha, that it was shown by the evidence of the writer and attesting witness that the amount of the note had been received by Abajee; and that there was the testimony of four other witnesses to the fact that when payment was demanded, the defendants promised liquidation. The plea that the note was a forgery because it was on unstamped paper, and bore only the signature of Abajee, the Moonsiff considered groundless; and the statement of two of the witnesses for the defence, to the effect that they had been asked by Bapoosha to attest the note after Abajee's death, he rejected as unworthy of credit.

The case then went in appeal before the Assistant Judge of Poona, who, in reversing the Moonsiff's decision, recorded his reasons as follows:—

"The bond No. 4 is on unstamped paper, though for a large amount. The terms are most oppressive—Rs. 24 per cent. per annum. An interval of five and a half years has been permitted to elapse between the execution of it and the institution of suit. The person who executed it is dead, and the action is brought against the heirs, who are necessarily much less likely to be provided with disproof. The bond is also written and attested throughout by the same hand, and the writer and one attesting witness only are produced to prove it. Under these circumstances, the Court holds the bond unproved, and considers it both equitable and desirable that no point should be stretched in favour of a person who, by omitting the prescribed course of using a stamped paper, and allowing his claim to lie over so long a time, deprives

1853
15th January.

P. W. LeGeyt, Esq.

the Court of a large amount of evidence which it has a right to expect."

From this latter decision a special appeal was admitted in the Sudder Dewanee Adawlut, to try "whether the Assistant Judge acted according to law and practice in holding the bond not proved for the reasons assigned, namely, being originally written on unstamped paper (subsequently stamped); the period between execution and enforcement; oppressive interest; and the evidence of the writer and one witness only; none of these reasons appearing on the face of the decree to legally invalidate the document." On this point it was held by a full Court, that the reasons assigned by the Assistant Judge were insufficient in law and practice to invalidate the bond, which the lower Court had, on the evidence adduced, pronounced to be a valid document, and under this view the decree of the Assistant Judge was reversed, and that of the Court of Original Jurisdiction upheld, with costs on respondents.

Messrs. A. Bell, P. W. LeGeyt, G. Grant.

No. 2765, Special.

KUNIALAL DAVIDASS SETH AGURWALEE, deceased, his Heirs HEERAMUL GUNPUTLAL and KESUNDASS .....*Appellants,*

versus

WISHWUSRAO, deceased, his Heirs RAMRAO, SHAMRAO, BHUGWUNTRAO, GUMBEERRAO, BULWUNTRAO, and BAPOO ..*Respondents.*

Rupees 777–1–3.

[Held that a Wutun cannot be viewed as part of an Estate that is liable for Debt.]

1853
21st January.

This suit was instituted by Kunialal against Ramrao and the other respondents, for the recovery of a debt incurred by their kinsman Wishwusrao, deceased, whose property it was stated they inherited; but with the exception of Bapoo, his sister's son, who admitted that he had received some property from him in gift, they all denied that they succeeded to any estate, save a Deshmookee and a Patelkee Wutun, which, they contended, could not be held answerable for his debts, under the provisions of Section XX. Regulation XVI. of 1827, and of Act XI. of 1843.

The Moonsiff of Yawul, in the Zillah of Ahmednuggur, who tried the case, found, that while Wishwusrao was alive and managed the wutuns, his kinsmen lived with him, and that after his death they inherited his property; and under these circumstances, and according to an exposition of Hindu law delivered by the Shastree of the Ahmednuggur Adawlut, he

held them bound for the debts of their kinsman, and awarded accordingly. As regards the objection in respect to the liability of the wutuns, he considered it invalid, as it was not the wutuns themselves, but their produce, from which payment would be required; and in respect to the property which Bapoo stated had been given to him, he held that there was no proof that such was the case, and that it must be held equally liable.

1853
21st January.

An appeal from this decision was carried into the Court of the Senior Assistant Judge at the detached Station of Dhoolia, when it was decided that a wutun could not be viewed in the light of an estate, as it is bestowed for service performed; but the "khata" having been proved, the decree of the Moonsiff was only amended by awarding that the debt should be recovered from the estate of the deceased Wishwusrao.

Dissatisfied with this decision, the heirs of Kunia-lal, who had died in the interim, prayed the admission of a special appeal in the Sudder Dewanee Adawlut, which was granted, to try whether the Senior Assistant Judge was right in altering the decree of the Moonsiff, (which, under an exposition of the Hindu Law Officer, had declared the Bhowbund to be personally answerable for the debts,) and restricting the claim to the estate of the deceased; and the case having been called on for hearing before a full Court, it was decided that the lower Court had rightly adjudged that the wutun held by the deceased Wishwusrao could not be viewed as part of his estate liable for his debts, and that appellants could only recover their claim from the estate of the deceased as distinguished from his wutun. The appeal was therefore dismissed, with costs.

P. W. LeGeyt, Esq.

Messrs. A. Bell, P. W. LeGeyt, G. Grant.

No. 2866, Special.

DYARAM KISHOR ..... *Appellant,*

versus

BAEE RULEAT, Daughter of DOOLUB RYJEE ..... *Respondent.*

Rupees 100.

[An Agreement entered into by the owner of a house previous to selling it is binding on the buyer; and if no period is specified in respect to the continuance of such Agreement, a claim on it is not barred by the Law of Limitations.]

1853
15th January.

Baee Ruleat brought this action in the Court of the Moonsiff of Kaira, to cause Dyaram to block up two windows which he had constructed in his house, to her injury and inconvenience, as tending to establish a right in his favour to a yard belonging to her; he contending in his answer that the yard was his, and that the windows were not newly constructed.

The Moonsiff in the first instance threw out the claim, on the ground that the real matter in dispute was the ownership of the yard; but the case going before the superior Court in appeal, it was held that if the yard was in Baee Ruleat's possession, as seemed probable, the suit should proceed, and it was accordingly remanded to the Moonsiff, who, on reinvestigation, found that it was in her possession, but that her claim was barred by limitation.

She then appealed again in the Court of the Assistant Judge of Ahmedabad, who recorded judgment as follows:—

"It appears clearly that the windows are not new,

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from the appellant's own evidence: her witnesses state that they have existed since Sumvut 1895 (A. D. 1839), and before that; and an agreement produced by appellant relating to them is dated Sumvut 1877 (A. D. 1821). The period for filing a suit would appear to have passed, but appellant objects to this that the agreement produced by her is proved; and that the meaning of the agreement is that the windows are to be closed whenever appellant may choose they having been originally allowed to be opened as a favour; and that, therefore, limitation has not occurred. The Court finds that the only living witness to the agreement states that the intention of it was to secure to appellant the right of closing the windows, in order that her yard might not be claimed by the respondent. The respondent says that the yard is his. It is clear that the agreement enables the appellant to close the windows at any time, and if respondent now sets up a title to the yard, it is of course necessary for her to take all legal steps to remove foundation for his claim. The Moonsiff's decree is reversed, and the Court orders the windows to be closed. Costs of both Courts on respondent."

From this decision Dyaram presented a Special appeal in the Court of Sudder Dewanee Adawlut, on his original grounds of defence, and on the further ground that the agreement which had been executed by the former owner was not binding upon him; on which points the sitting Judge recorded his opinion as follows:—

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"On the former ground, being matter of evidence only, an appeal is not admissible under the Act. Whether an agreement executed by an owner of a

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house, which that owner subsequently sells, is binding on the purchaser, and how far a conditional agreement, such as that on which the present demand rests, is affected by the Statute of Limitations, are doubtful points; and to determine these I admit a special appeal."

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The case accordingly went before a full Court, when it was decided that it had been rightly held by the Assistant Judge, that the property purchased by the special appellant was burthened by the condition specified in the agreement entered into in 1821 by the former owner with the respondent Baee Ruleat; and that no period being specified in that agreement for the termination of the permission granted, that point was not affected by the Law of Limitations. The appeal was therefore dismissed, with costs on appellant.

No. 2896, Special.

RAMCHUNDER WASOODEW SEELKUR .... *Appellant,*

versus

MORO KRISHNA GONDLEKUR ..... *Respondent.*

Rupees 50.

[In an Action for Defamation, in which the Defendant, in a Magisterial case in which he was acquitted, sued the Prosecutor for damages, it was held by the Sudder Dewanee Adawlut that an action under such circumstances was not precluded by Clause 2nd, Section II. Regulation XIV. of 1827.]

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21st January.

Moro Krishna, in bringing this action in the Court of the Moonsiff of Hurnee, in the Zillah of the Konkun, set forth that Ramchunder Wasoodew, without any

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cause, went before the Police Umuldar, and laid a complaint that he, the plaintiff, had appropriated a bullock, the property of a person who had left the Zillah, and in consequence he was summoned as a criminal, and an investigation took place, which resulted in the complaint being dismissed, the former owner of the bullock giving his evidence that he had given the animal to him before leaving the Zillah. He therefore brought this action for defamation of character, laying damages at Rs. 200.

Ramchunder replied that he had not defamed the plaintiff: on hearing that a person had gone from the village, leaving a bullock behind, which he considered "béwaris" (without claimant), he preferred a complaint to the Police Umuldar against the plaintiff, who had appropriated it.

The Moonsiff rejected the claim, on the grounds that from the evidence adduced, and from the proceedings before the Police Umuldar, it appeared that Ramchunder did not prefer the complaint without sufficient grounds, and being also of opinion, that unless such cases were brought to the notice of the Government authorities, many offences would never be brought to light.

The matter was then appealed to the Senior Assistant Judge at the detached Station of Rutnagherry, who decided that the Moonsiff's decree was erroneous, for the following reasons:—

"Appellant (Moro) urges that respondent (Ramchunder) intended to injure his character when he preferred the complaint, and that he did so is evident from the fact of his having waited to complain till after the bullock died, and from the fact of his know-

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ing that the owner of the said bullock had left the Zillah, and that the probability was his evidence would not be forthcoming to establish that the bullock had been given to him before he left the Zillah. This argument appears to be sustained by the evidence adduced, inasmuch as there does not seem to be any ground, or probable cause even, for respondent's having preferred such a complaint as the one he did, and which he verified on solemn affirmation. The mere fact of the person who formerly owned the bullock having left the Zillah for a time, cannot be deemed a sufficient reason for bringing a charge tantamount to theft before the Police Umuldar; and as respondent had no interest at all in the matter,—that is as regards the bullock in question,—the inference is that malice alone could have suggested his making such an allegation against appellant. The evidence of the former owner has fully proved that the charge was unfounded; and as appellant is said to be a person of some character and wealth, it can hardly be supposed that he would not be desirous of removing the stigma cast on him by such a proceeding as that respondent had recourse to. The Court, therefore, after mature deliberation, awards appellant the sum of Rs. 50 as damages."

Ramchunder, in turn, made a special appeal to the Sudder Dewanee Adawlut, on the original ground of justification and self security, he being an agent of the co-sharer of respondent in a "khotee" village, in which the cause of complaint to the Police Umuldar arose. The sitting Judge who heard the application to appeal recorded his opinion that such a report as Ramchunder made could not be considered as that sort of defamation which would

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constitute a cause of civil action under Clause 2nd, Section II. Regulation XIV. of 1827; and under this view he sent the case before a full Court, when it was held that special respondent (Moro) was not precluded by the law referred to in the certificate from prosecuting special appellant (Ramchunder) for defamation, and the appeal was therefore dismissed, with costs.

No. 2900, Special.

BALAJEE RAMCHUNDER BHUT.....*Appellant*,

versus

DAJEE bin LUXUMON SHETGA.....*Respondent*.

Rupees 5.

[It is competent to a Plaintiff at any stage of a Suit to withdraw his complaint by filing a Razeenama, when a Decree shall not be passed.]

1853
21st January.

Balajee sued in the Court of the Sudder Ameen of Rutnagherry to recover a piece of ground which he stated he had let to Dajee, who did not appear to defend the action.

The Sudder Ameen remarked in his decree in the matter, that Balajee had produced no proof in support of his claim, and that he had also filed a razeenama, requesting to be allowed to withdraw his complaint; but as it was considered that this was merely done to enable him to bring a fresh action, instead of acting on it, the Court threw out the claim, whereupon an appeal was instituted in the Court of the Senior Assistant Judge, who struck the suit off the file, for the following reasons:—

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"The Court having duly examined all the documents in the case, is of opinion that the Sudder Ameen's decision is not altogether correct: by Clauses 1st and 2nd, Section XVIII. Regulation IV. of 1827, it is laid down that the plaintiff can at any stage withdraw his complaint by filing a razeenama, and that he shall become liable for the costs of both parties; but that such razeenama shall not bar any action for damages competent to the defendant. Under such circumstances as these, the Court considers that the Sudder Ameen should have acted on the razeenama, but the appellant (Balajee) cannot, after having filed a razeenama, appeal."

Balajee next prayed the admission of a special appeal in the Sudder Dewanee Adawlut, which was granted under the following certificate:—

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"The decree of the Senior Assistant Judge is altogether wrong and irregular, admitting that the decree of the Moonsiff (Sudder Ameen) was illegal. He records his opinion that the party aggrieved by it should not have appealed against it, because he had filed a razeenama in the lower Court. The razeenama left a future suit open to him: the nonsuit of the Moonsiff shut him out from any future action. What course was he to pursue, save appeal? I think that the decree of the Senior Assistant Judge should be reversed, and the case returned to the Moonsiff, to be disposed of according to law."

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The case having accordingly gone before a full Court, it was found that the decisions of the Senior Assistant Judge and Sudder Ameen were in violation of the express provisions of Clause 1st, Section XVIII. Regulation IV. of 1827, viz. that it shall be competent

to the plaintiff at any stage of a suit to withdraw the complaint by filing a razeenama, when a decree should not be passed. The decrees of both Courts were therefore annulled, with costs on respondent.

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No. 3170, Special.

GOVIND NARAYUN.....*Appellant,*

versus

GUNESHRAM RAMKRISHUN .....*Respondent.*

Rupees 416.

[Mortgage Deeds registered under the provisions of Act XIX. of 1843 are to have preference over those that are not registered, even though a decree may have been obtained on them.]

Govind Narayun and another sued in the Court of the Moonsiff of Malwan for possession of a third share of a "tikan" or spot of ground, founding his claim on a mortgage bond; Guneshram contending that he held a mortgage of the property of an earlier date, on which, having brought a suit, he obtained a decree, and was put in possession. The mortgager was also made a defendant, but he did not appear to plead.

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5th February.

The Moonsiff considered that the plaintiffs had proved their bond; and as it was found that they had registered it, and as Act XIX. of 1843 provides that mortgage deeds when registered shall take precedence of deeds not registered, although of previous execution, he decreed that Rs. 416, being the amount of the mortgage debt, should be paid to the plaintiffs, or else that the ground should be given up to them.

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5th February.

From this decision Guneshram appealed in the Court of the Joint Judge at Rutnagherry, representing that he had possession of the property fourteen months, and that when he instituted the suit, which resulted in his obtaining possession, Govind Narayun did not oppose him; and he further urged, that having obtained a decree, and having been put in possession, he could not be disturbed.

When the case was heard, the Joint Judge annulled the decree of the Moonsiff, on the ground that the Act quoted was not applicable to a party who had obtained a decree, and got possession of property by virtue of that decree; and also because Guneshram had instituted a suit long before Govind Narayun did, and had a decree passed in his favour, and subsequently got possession, which the latter never had. Upon this Govind Narayun prayed the admission of a special appeal in the Sudder Dewanee Adawlut,

M. Larken, Esq.

which was granted, to determine whether the Joint Judge had not departed from law in holding that Act XIX. of 1843 did not govern the case, for the reasons recorded in his judgment.

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The case accordingly went before a full Court, when it was held that the Joint Judge had "departed from law in holding that the provisions of Act XIX. of 1843 did not govern the case"; and it was therefore decreed that the registering of Govind Narayun's mortgage bond gave it a preference over the unregistered bond of Guneshram Ramkrishun, notwithstanding the decree obtained by him, recorded in Case No. 16. The decree of the Joint Judge was accordingly reversed.

No. 2902, Special.

BHIKMANEE bin SUDASEWMANEE, and
BHIKMANEE bin RAMCHUNDERMANEE
GOKTE ..... *Appellants,*

versus

TATMANEE bin GUNESHMANEE, deceased,
his Son and Heir BHIKMANEE, a
Minor, also deceased, his Son and Heir
SUKARAMMANEE, a Minor, by his
Guardian BAL bin WAMUNMANEE .... *Respondents.*

Rupees 5.

[When the matter sued for is not Land, it cannot be brought under the provisions of Regulation XII. of 1830 for estimating the value of land in laying claim to it.]

1853
5th February.

Bhikmanee and the other appellant brought this action in the Court of the Sudder Ameen of Rutnagherry, to establish their right to collect half the manure which accumulated about the houses of the fishermen in the village of Golup; Sukarammanee and Bal bin Wamunmanee contending for the defence that they had no claim to it.

The Sudder Ameen found that both parties had ground near the spot where the fishermen's huts were situated, but that the balance of evidence preponderated in favour of the plaintiffs, in whose favour he accordingly decided. His decision, however, was annulled in appeal in the Court of the Senior Assistant Judge, for reasons recorded as follows:—

"Appellants (the original defendants) urge that respondents (the original plaintiffs) have not brought

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their action according to an interpretation on Regulation IV. which directs, that when there is no assessment on the land, ten times the value of the produce is to be taken as the amount for which the suit is to be instituted; that respondents (plaintiffs) were fined by the Magistrate for taking away earth from the spot; that respondents have no right over the land, or the manure which may be accumulated on it, the spot where the huts stand being entered in the survey accounts as belonging to their ancestors. Now, without going into the merits of all the objections raised by the appellants, the Court considers that by Clause 1st, Section III. Regulation IV. of 1827, the suit has not been properly instituted, inasmuch as it is there laid down, that when a claim is founded on a demand for any other property besides money, the value, when it shall consist of periodical income, shall be calculated at the rate of ten years' purchase. Now in this case half the manure found on the ground and claimed by respondents is valued at Rs. 5 annually, and no assessment is paid by respondent for the said ground, consequently he should bring his action for ten times the value of half the manure. With this view of the case, the Court annuls the decree of the lower Court, and respondents can, if they think proper, bring a fresh action."

Instead of adopting this course, they prayed the admission of a special appeal in the Sudder Dewanee Adawlut, which was allowed, as stated in the certificate granted by the sitting Judge, to determine whether the decree of the Senior Assistant Judge was not opposed to the Regulation, it not being requisite to calculate the claim at ten years'

G. Grant, Esq.

purchase, as the ground where the manure was collected was taxed ; and the case going before a full Court, it was held that the matter sued for not being land, could not be brought under the provisions of Regulation XII. of 1830 ; and the appeal was therefore dismissed.

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Messrs. A. Bell, P. W. LeGeyt, G. Grant.

No. 2893, Special.

THE COLLECTOR OF RUTNAGHERRY .... *Appellant,*

versus

NARO DHONDEO MUNDLIK ..... *Respondent.*

Rupees 2,548–6–2.

[A Fact found in a lower Court is not a point for Special Appeal in the Sudder Dewanee Adawlut.]

The Collector of Rutnagherry having, under the provisions of Section XLVI. Regulation XVII. of 1827, directed one-half of the village of Naneej to be assessed, Naro Dhondeo, as Inamdar, appealed to the Zillah Judge of the Konkun, under the provisions of Section XLIX. of the same Regulation.

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His grounds of appeal were, that his great-grandfather received the village in inam from the Pruthinidi in A. D. 1733, under a sunnud, and that the family was in possession of it upwards of a hundred years; to which the Collector replied, that he was prepared to prove that the family did not hold the half of the village in inam, but merely as servants ; and as service was not exacted or required by the British

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Government, the assessment, he contended, was rightly levied under the provisions of Regulation VI. of 1833.

The case having been heard by the Zillah Judge, he defined the points for consideration to be—*1st*, whether the sunnud on which Naro Dhondeo founded his claim was a forgery, as the Collector alleged, or not; and *2nd*, whether the village was given in inam or mookasa; and on these points he recorded as follows:—

"The sunnud which is produced by appellant (Naro Dhondeo) is dated in the year 1733, and purports to have been given to Visajeeram by Jugjeewun Phurusram Pruthinidi; and in this the village of Naneej is distinctly stated to have been granted in inam. The Collector has produced two other sunnuds of the same year, issued by the same authority, and points out that the seals do not correspond; that Visajeeram is addressed by the title तांचां, which is not usual with persons of his rank and consequence; and further notices the omission of राजश्री at the commencement of the sunnud, which was always customary; and also points out that the title of the Raja of Sattara is given as राजश्री छत्रपति, instead of which it should have been श्रीमंत महाराज छत्रपति; from all which he argued that the sunnud was false. But on this the Court remarks, first of all, that the title तांचां is also used in a sunnud addressed to the Komavisdar, who was also a person of rank and consequence; and with reference to the difference in the title of the Raja of Sattara, the Court finds in Exhibit No. 45 a great variety in the titles used in speaking of His Highness, so that the Court cannot infer, from these discrepancies, that the sunnud is false. The difference of the seal, also, does

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not appear to this Court to be of any moment; for on comparing the seals affixed to other sunnuds granted by the Pruthinidi, the Court finds some of them round, and others eight-cornered, and of larger dimensions than the one affixed to the sunnud on which the present claim is founded. The appellant (Naro Dhondeo) contends that these sunnuds have been confirmed by the authorities, and that the parties holding them are in possession, a point which has not been disputed on the other side, so that the Court concludes that the Pruthinidi must have had several seals, and used them indiscriminately. On the other hand, the sunnud is alleged to have been granted in the year 1733, and an extract from the Poona Dufturs, No. 25, shows an entry to the effect that the village of Naneej, in the Rutnagherry Talooka, was granted to Visajeeram, through the Pruthinidi of Myheeputghur, by the Raja of Sattara (Shaoo), at Sattara, and this entry occurs over a period of twelve years, commencing 1781, that is nearly 50 years after the grant, which is a strong argument in favour of the validity of the sunnud. Therefore the Court does not think the evidence adduced by the Collector is of sufficient weight to vitiate it.

"The Collector next contends that the village is entered in the accounts from the year 1754 as 'budul mooshara' (exchange for service), and 'mookasa' (service); and as the office of Mujundar was held by Dhondeo Narayun, appellant's father, and as Visajeeram was a servant of Angria, the village was granted as pay for service. The proofs recorded by both parties are from the Peshwa's records: in some of them the village is entered as 'mookasa,' in others

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'kéreej kubuj tynat,' in others 'inam,' and in others 'budul mooshara.' Of these, according to Molesworth, only two signify service, the others mean inam; so that it is evident that these terms were used indiscriminately, and no inference can be drawn either for or against the question from the circumstance. The Collector urges that certain land in the village Moorood, belonging to appellant in inam, is entered under the head of 'kéreej mooshara'; and if the village of Naneej had been given in inam, it would have been found under the same heading; but from an extract from the Poona dufturs, Exhibit No. 65, being an account of the sums received by the appellant's father, Dhondeo Narayun, as Mujundar of Unjunwell, the Court finds that even the lands of the village of Moorood, which the Collector acknowledges to be inam, are entered under the heading of 'budul mooshara,' which means 'pay for service,' for six years,—that this argument is of no weight.

"Dhondeo Narayun was appointed Mujundar in the year 1759, whereas Visajeeram received the village in the year 1733, when he was not in service; and as for the Pruthinidi bestowing the village on Visajeeram, because he was a servant of Angria, the Court considers that the Collector can hardly suppose that such could have been the case.

"The Collector urges, further, that in the year 1787, the allowances of all the officers in the Unjunwell Talooka were attached, by reason of some fault having been committed in the discharge of their duty, among which was included the village of Naneej, which would not have been the case unless it had been granted as 'pay for service,' as the inam lands belong-

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ing to appellant in the village of Moorood were *not* attached; but on this the Court remarks, that Moorood is situated in the Talooka of Severndroog, and was consequently not attached.

"On the part of the appellant three witnesses have given evidence, and from their statements, which, in the opinion of the Court, the Collector has not very justly attempted to vilify, it is evident that 'budul mooshara mookasa' means inam, and that many persons are at present holding villages entered under the same heading in inam. It is very unlikely that at this distance of time these parties should wish to befriend appellant, because he happened to be a connection of the Peshwa, after they had all taken service with the British Government.

"On the accession of the British Government the village in dispute was attached, and when appellant Naro produced his sunnud before Mr. Reid, he ordered, under date 24th October 1818, that the village should be restored to him. Mr. Reid's order mentions that appellant had produced a sunnud of the same year as the one on which he now urges his claims, and it is not very probable that he would have been reinstated if his sunnud had been defective, and allowed to remain in undisputed possession for a period of 20 years afterwards. The Collector says that the investigation made by Mr. Reid was not a proper one; that appellant only produced one sunnud before him, whereas he now produces three: but as to the first, the Court remarks that the Collector has not brought forward any evidence to prove this; and with regard to the other, the two additional sunnuds are, more properly speaking, orders to other

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parties not to interfere with appellant's ancestors' possession; and there was no reason why they should have been produced before Mr. Reid.

"Under these circumstances the Court is of opinion that the half of the village has been wrongly assessed, and directs that it be restored to the appellant. The claim for damages cannot be taken into consideration in the present case, and the appellant is therefore instructed that he is at liberty to file a suit to recover, if he thinks proper. Costs to follow the verdict."

P. W. LeGeyt, Esq.

From this decision a special appeal, at the instance of the Collector of Rutnagherry, was admitted in the Sudder Dewanee Adawlut, to try whether the Zillah Judge had decided rightly, and according to the practice of the Courts and usage of the country, in holding that the half of the village of Naneej, claimed to be held as inam by a sunnud from the Pruthinidi, dated A. D. 1733, was not liable to be assessed by the Collector, "the entries in respect to the said village of Naneej, in the Poona duftur, produced in evidence, showing that although in one place it is registered as 'budul mooshara,' in another as 'mookasa,' in another as 'kéreej kubuj tynat,' and in another as 'inam,'* the variety of these terms casts a doubt as to the fact of the genuineness of the alleged original grant, and the light in which it was regarded by the Peshwa's Government."

Messrs. John Warden, P. W. LeGeyt, G. Grant.

The case then went before a full Court, when it was

* "Budul mooshara," in lieu of pay;—"Mookasa," service tenure by which land is held, as in "surunjam"; also an "umal," or revenue share of a village;—"Kéreej kubuj tynat," an additional allowance for a military charge or command;—"Inam," a grant of land in perpetuity, with or without condition of service.

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considered that the precise points to be tried under the above certificate were, whether the Mahratta terms enumerated in it did not cast so much suspicion on the sunnud as to raise a presumption that it was not a genuine document, or at least that it had been viewed in a different light from that in which the Mahratta Government viewed it: and as regarded the first of these points, it was held that it was a fact found in the lower Court, and was not a point for special appeal; and on the second it was considered, that the Zillah Judge had not placed any construction on the documents before him which their language did not warrant. The special appeal was therefore dismissed, with costs.

No. 2941, Special.

SUKARAM PUDMAKUR, RUNGOO RAMCHUNDER, GUNESH PRULAD, DEO SITIKUNT, RUNGOO KESOW, SHAMJEE JIRAM, and ABAJEE GOPAL.....*Appellants,*

versus

TOOLJARAM KONHER, and NARAYUN SUKARAM.....*Respondents.*

Rupees 25.

[In a Suit instituted to restrain certain parties from assuming the style and title of Koolkurnee, and in which the Assistant Judge, in appeal, issued an injunction to that effect, it was declared by the Sudder Dewanee Adawlut, that the only shape in which the case could be adjudicated was as "damages for injuries," damages being assessed in proportion to the injury proved.]

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Tooljaram and Narayun (respondents) sued Sukaram and the other appellants in the Court of the

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Moonsiff of Kuda, in the Ahmednuggur Zillah, to restrain them from assuming the style and title of Koolkurnees of Merajgam, which they were in the habit of doing on every occasion they signed a paper, although they had no share whatever in the wutun. It was further represented that one of the defendant's family, Pudmakur Trimbuk, had formerly sued to recover a share in the wutun, but his claim had been rejected in all the Courts; and that their object in signing themselves Koolkurnees was at some future time to set up a claim to the wutun.

For the defence, it was stated that the family of the defendants had been the proprietors of the wutun for three hundred years, that the plaintiffs' ancestors had originally been the Goomashtas of the family, but had afterwards, on becoming Dewans to the Nimbalkur Jagheerdar, violently appropriated the wutun; and that if the suit to which the plaintiffs alluded were examined, the truth of the defendants' title would be discovered. It was also contended that the fathers of three of the defendants were alive, and that the action should have been brought against them.

The Moonsiff, in disposing of the case, held that it had not been shown that the plaintiffs suffered any loss by the defendants signing themselves Koolkurnees; that the suit alluded to by them was not binding on the defendants, as they were not personally included in it; and that the mere signing themselves Koolkurnees did not make them proprietors of the wutun; under this view without giving any opinion as to who was Wutundar, he rejected the claim of the plaintiffs, who thereupon appealed in the Court of the Assistant Judge, representing that the suit to

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which they had referred, had been brought by the father of one of the defendants; that from the decision in it the defendants must have known that their family had no claim in the wutun, and they therefore had no business to sign themselves Koolkurnees.

In pronouncing judgment in the matter, the Assistant Judge (H. B. St.G. Tucker) recorded :—

"I have had some difficulty in coming to a decision in this case, which I have postponed for several months, to enable me to make search for precedents. I have only been able to find two which are at all applicable, viz. Appeal No. 34 of 1847 of the Judge's file, decided on the 22nd September 1848, in which decrees passed by the Moonsiff of Yeola, and of the Assistant Judge (myself), nonsuiting the plaintiff, who had sued to restrain the defendant from signing himself Patel, on the ground that the mere assumption of the name, without a simultaneous appropriation of any of the huks or allowances, or arrogation of any of the privileges of the wutun, was not a sufficient cause of action, were affirmed by W. J. Hunter, Judge; and Appeal No. 8 of 1844, in which the same Judge, under date the 5th October 1846, in affirmation of the decrees of the Principal Sudder Ameen, and Assistant Judge (A. A. C. Forbes), refused to annul an order of the defendant, the Collector, prohibiting the plaintiffs signing themselves Koolkurnees in documents, on the ground that the plaintiffs had not proved themselves proprietors of the wutun, the title appertaining to which they had assumed.

"On subsequent deliberation, I have found reason to change the opinion I held when I passed the decree in the first of the cases adverted to. In the present

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state of the country, and administration of justice, claims to hereditary titles are sometimes allowed on evidence which would be considered inconclusive in places where the different social relations are less confused, and the rank of individuals more definitively settled. To enable a party eventually to set up a false claim to a wutun, the first step is the assumption of the appellation peculiar to the holders of that wutun; and the habitual use of this designation uncontested would, I am of opinion, in most instances be considered presumptive evidence of an original good title. Against encroachments of this nature it is but just that the holders of hereditary offices should be able to guard themselves, and there seems no more reason for obliging them to lay their claim at the whole value of the wutun, than there would be for forcing a party who wished to recover a corner of a field which had been enclosed by a neighbour to sue for the value of the whole field, instead of the value of the small portion appropriated. It is true that claims of this kind are capable of no precise valuation, but this objection will apply to many other rights and privileges, which constantly form the subjects of Civil actions.

"In former times, the 'biklamache' huk, or right to draw out deeds relating to immoveable property, and to receive fees for the same, was an important privilege appertaining to the office of Koolkurnee; but this privilege has gradually, and unwisely, I think, been destroyed under our Government, whose officers have not generally deemed it essential to the validity of such deeds that they should be drawn out by the Village Accountant: the appellants (plaintiffs) have, therefore, no means for making an exact estimate of

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the value which would accrue to them by the prevention of the encroachment complained of. They admit that as yet they have suffered no substantive loss by respondents (defendants) adding the words 'Koolkurnees of Merajgam' to their signatures, but state, that if they be permitted to continue the practice, they or their heirs may at some future period be caused much trouble and inconvenience, if not material damage. This, as I have above remarked, I believe to be perfectly possible.

"On the other hand, the respondents (defendants) allow they are not in possession of any portion of the wutun, the appellation belonging to which they have taken to themselves, and it would seem from the decrees (Exhibits Nos. 15 and 19 A) that one of their family preferred a claim to a sixth share of the wutun, and was nonsuited, mainly on the ground that he had been unable to establish that his family had held possession within a period of ninety years. Should the respondents' claim to the wutun be really just, no loss will accrue to them from a prohibition to sign themselves Koolkurnees till they have established their title in a Civil Court, whereas the appellants may suffer prospective injury if the respondents are permitted to continue their present practice. Under these circumstances, I resolve to issue the injunction required, and the lower Court's decree is hereby reversed, it being decreed that the respondents are forbidden to sign themselves 'Koolkurnees of Merajgam' till they have proved their claim to that title in a Civil Court. Costs of original suit to be borne by respondents; of appeal by appellants."

A special appeal from this decision was admitted P. W. LeGeyt, Esq.

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in the Sudder Dewanee Adawlut, to try whether the decree of the Assistant Judge was a legal one, or, in the words of the certificate, "whether the claim for an injunction to restrain a party from assuming a title alleged to be the distinctive right of another party can be made the subject of a civil suit under the provisions of Section XXI. Regulation II. of 1827, unless specific damages, caused by such assumption, are proved to exist;" and the case having been called on for hearing, it was decided by a full Court that the only shape in which the case could be adjudicated was as "damages for injuries," and that the lower Court having found that the assumption of the title had a tendency to injury, should have assessed damages in proportion to the injury proved, instead of confining itself to the issue of an injunction to the original defendants to abstain from assuming a title; and in order that this might be done, the decree of the Assistant Judge was annulled, and the case was remitted to the lower Court, the costs in the Sudder Dewanee Adawlut being ordered to be apportioned on the ultimate decision of the suit.

Messrs. A. Bell, P. W. LeGeyt, G. Grant.

No. 2944, Special.

KUSUNDASS NUTHOO .....*Appellant,*

versus

REMANBHAEE ADUMBHAEE, and his Security BUNOOBHAEE MULIKBHAEE.....*Respondents.*

Rupees 15–14–8.

[Held that the Courts have no power to reduce a Rate of Interest, however exorbitant it may be, which is secured by an express written Agreement.]

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Kusundass sued Remanbhaee, on an instalment note of hand, to recover interest on instalments paid after date; the defence of the latter being that his ignorance was imposed on in respect to the rate of interest to be paid.

The case was tried by the City Moonsiff of Surat, who awarded a less sum than had been claimed, on the ground that Remanbhaee and his security did not know what they were about in allowing interest at 40 and 60 per cent. on the instalments overdue; and this decision was affirmed in appeal in the Court of the Zillah Judge, who recorded his opinion that it was just and right; but a special appeal was admitted in the Sudder Dewanee Adawlut, to try whether the lower Courts had not decided contrary to the provisions of Clause 1st, Section X. Regulation V. of 1827, in disallowing a claim for interest founded on an express written agreement, notwithstanding the usurious rate which had been agreed to.

P. W. LeGeyt, Esq.

The point was heard before a full Court, when it was found that the lower Courts had decided contrary

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to the provisions of Clause 1st, Section X. Regulation V. of 1827, there being an express written agreement to pay the rate of interest claimed; and however exorbitant that might be, the Courts had no power to reduce it. The decrees of the lower Courts were accordingly reversed; each party being made to pay his own costs in all the Courts, under Clause 3rd, Section LVIII. of Regulation IV. 1827.

No. 2966, Special.

MAHDOWJEE MOHUNJEE .....*Appellant,*

versus

BHEEM POONJA.....*Respondent.*

Rupees 784–3–5.

[Held that a party borrowing or lending Money is not prohibited by the Stamp Regulation XVIII. of 1827 from dividing the sum so borrowed or lent into two sums, although the aggregate amount would carry a higher stamp than would the two separate amounts.]

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Mahdowjee sought to recover from Bheem Poonja and others on two notes of hand, which Bheem Poonja denied ever having executed.

The case was tried by the Moonsiff of Gogo, who found that the notes were proved, and awarded accordingly; but in appeal in the Court of the Joint Judge of Ahmedabad, the decision was reversed, on the grounds that both the notes were passed the same day, and should have been on one stamped paper, the duty on which, as the amount of the two notes together exceeded Rs. 500, would have been

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Rs. 2; whereas, by dividing the amount into notes of Rs. 351 and Rs. 201 respectively, the duty amounted to only Rs. 1 on one, and 8 as. on the other, thus defrauding the Stamp Revenue in the sum of half a rupee.

John Warden, Esq.

From this decision a special appeal was admitted in the Sudder Dewanee Adawlut, to determine, 1*st*, whether the Stamp Regulation forbids the discretion exercised by Bheemjee of dividing the claim upon him into two parts, and passing a note for the payment of each of those parts on the stamp prescribed for such part, instead of on one note for the whole sum; 2*nd*, whether, if the first point were determined against the exercise of this discretion, the lower Court had acted according to practice in visiting upon appellant this alleged fraud, by rejecting his claim; and 3*rd*, whether appellant should not have had the opportunity of adding such stamp as the Court deemed requisite for the adjudication of his claim.

Messrs. A. Bell, P. W. LeGeyt, G. Grant.

These points having been tried by a full Court, it was held that the Stamp Regulation XVIII. of 1827 did not forbid a party lending or borrowing money from dividing the sum so borrowed or lent into two sums, although the aggregate amount of the money would have carried a higher stamp than was necessary for the two separate notes. The decree of the Joint Judge was therefore annulled, and the case was remitted to the Zillah, to be placed on the file under its original number, and disposed of on its merits.

No. 2971, Special.

BAPOO PRAGJEE..... .....*Appellant,*

versus

UJABHAEE KAKABHAEE, VURSABHAEE KAKABHAEE, MUDARSING KAKABHAEE, a Minor, his Guardians UJABHAEE and VURSABHAEE ....*Respondents.*

Rupees 135–12–0.

[In a suit on Notes of Hand passed separately by a father and his son, it was held by the Zillah Court that separate suits were necessary to recover on them; but the Sudder Dewanee Adawlut decided that it was a departure from law and practice to require it.]

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This was a suit to recover interest on a decree in his favour, and a sum due on two notes of hand instituted by Bapoo Pragjee, and the Moonsiff of Dundooka, in the Ahmedabad Zillah, who tried it, found for him as regarded the interest, but rejected his claim on the notes; whereupon he appealed in the Court of the Judge, who remanded the case to the Moonsiff for re-investigation; and that officer adhering to his former decision, the case was appealed again in the Court of the Joint Judge, when judgment was delivered as follows:—

"The Court finds that the two bonds are from separate individuals, and that therefore two suits should have been instituted. The original petition, therefore, as far as the bonds are concerned, is dismissed, and appellant (Bapoo Pragjee) may file new suits."

M. Larken, Esq.

He preferred, however, presenting a special appeal in the Sudder Dewanee Adawlut, which was admitted, to try whether the Joint Judge had not departed

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from law, in declaring that two suits must be brought upon the two notes of hand, when one was in the name of a deceased father, and the other in that of his son and heir; and the case having been heard by a full Court, it was decided that it was a departure from law and practice to reject the claim of appellant upon the two notes, and requiring that separate suits should be brought for the recovery of the claims resting on them. The Joint Judge's decree was therefore annulled, and the case remanded to the Zillah Court, to be replaced on the appeal file, under its original number, and disposed of on its merits.

Messrs. A. Bell, P. W. LeGeyt, G. Grant.

No. 2984, Special.

OODECHUND TARACHUND, and DYABHAEE ICHACHUND ..... *Appellants,*

versus

MOTEERAM and PURMANUND, Sons of PRANJEEWUNDASS ..... *Respondents.*

Rupees 213–4–0.

[Interest disallowed on a sum advanced as "Biana," or Earnest-money, on the ground that it was of the nature of a deposit, and that no notice that interest would be demanded, as required by Act XXXII. of 1839, had been given.]

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Oodechund and Dyabhaee sued in the Court of the City Moonsiff of Surat, to recover a balance of Rs. 808-4-0 due on an opium transaction with Moteeram and Purmanund, in which "biana" or earnest-money had been paid, and the whole of the opium

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delivered, and settled for, with the exception of the balance in question. The defendants admitted the transaction, but pleaded counter claims, and also contended that the matter was not cognizable by the Courts, the transaction being of the kind known as "waeeda bépar," or time-bargains.

The Moonsiff threw out the claim on this ground, and the Zillah Judge in appeal affirmed his decision; whereupon the original plaintiff presented a petition of special appeal in the Sudder Dewance Adawlut, which was admitted, on the ground that the Moonsiff's decree was founded in error, in that he said it had been ruled by the Sudder Dewanee Adawlut that opium transactions are of a gambling character, and therefore not cognizable before the Civil Courts; and as all proof of the nature of the transaction had been refused in consequence, it appeared to the Sitting Judge imperative on the Court before which the case was first tried, to receive all the evidence the parties desired to bring forward in support of their respective pleas, until which had been done it would hardly be possible to determine with accuracy the nature of the case; besides the refusal to receive such evidence was contrary to law.

The case under this view went before a single Judge, who stated his opinion respecting it as follows:—

"In the case, appellants originally brought an action, setting forth that in the year Sumvut 1894 respondents (original defendants), managers of the firm of Pranjeewun Purshotum, agreed to sell twenty chests of opium, at Rs. 825 per chest, to appellants, who paid them Rs. 2,000 as biana (earnest-money); that five of these chests were received by appellants'

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agent at Bombay, and paid for, and the rest were settled for at Surat with appellants' firm: appellants therefore prayed that the sum of Rs. 808-4-0, due on account of the said transaction, might be directed to be paid from respondents, and from property belonging to their firm.

"Respondent Moteeram did not appear, (before the Moonsiff, Maneckjee, of Surat,) but respondent Purmanund being present, denied their being indebted to appellants, and stated that appellants owed them money on account of an opium transaction, but they could not prefer a claim, such transactions not being cognizable by the Courts, and some claims founded on them being rejected by the Sudder Adawlut.

"The Moonsiff held, with reference to a decree of the Sudder Adawlut in case No. 1548, that opium transactions were of a gambling character; and, moreover, the claim raised did not appear to be a reasonable one, that the deed in appellants' possession ought, under Section X. Regulation XVIII. of 1827, to have been on stamped paper; and that accounts produced by appellants were not trustworthy. He therefore non-suited them.

"In appeal by appellants in the Court of the Judge of Surat, this decision was confirmed.

"The appellants, as plaintiffs, sued defendants for what they stated to be the balance of an account on sundry transactions, which had taken place between them in the purchase and sale of opium. Respondents denied that any balance was due. The Moonsiff (Maneckjee) found that the transactions were gambling transactions in opium, and threw out the claim as not cognizable in a Court of law. This was

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confirmed by the Judge. The special appeal was admitted to try whether the claim had not been improperly rejected, because appellants had not had an opportunity of proving that the items of their claim were not gambling transactions.

"It appears that the Moonsiff distrusted the accounts produced by appellants in support of their claim. Appellants certainly applied for the evidence of several persons to be taken in the Durkasts 20 to 24, and the reason assigned by the Moonsiff for not examining them, viz. that the transactions related to opium, is not satisfactory. The Moonsiff seems to have assumed, that because the transactions related to opium they must have been of a gambling nature. Now this does not necessarily follow: they may have been so; but the appellants aver they were not, and they ought to have had an opportunity of proving they were not. This was not given them, at least to the extent asked for, nor was any adequate reason assigned for the refusal. I am, therefore, not prepared to confirm the decrees of the lower Courts, which I think should be annulled, and the case returned, to be tried anew on its merits by the Moonsiff, and for this purpose I refer it to a full Court."

It went before a full Court accordingly, when it was held that the appellants ought to have had an opportunity of proving that the transactions were not of a gambling nature; and as this opportunity had not been given to them to the extent asked for, and no adequate reason had been assigned for the refusal, the decrees of the lower Courts were annulled, and the suit was remanded, to be tried on its merits in the Court of original jurisdiction.

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On the re-trial of the case, the Moonsiff found that the transactions were of a gambling nature, and that the only *bonâ fide* transaction was the payment of Rs. 2,000 by Oodechund and his brother to the firm of Pranjeewundass Purshotumdass as earnest-money, payment of a balance of which amount he awarded, without interest; and the Zillah Judge, in appeal from both parties, affirmed the decision, for the following reasons:—

"The Court is of opinion that the decree of the said Moonsiff is just and right, for the reasons therein assigned, and because interest on gambling advances should not be allowed."

M. Larken, Esq.

From this latter decision a special appeal was admitted, at the instance of the original plaintiffs, in the Sudder Dewance Adawlut, to try whether the Zillah Judge did not depart from law and practice in disallowing, for the reasons recorded by him, interest on certain earnest-money (biana), which the lower Court, and the Judge himself had pronounced to be a *bonâ fide* transaction, in contradistinction from the rest of the claim, which was declared to be a gambling one.

Messrs. A. Bell, P. W. LeGeyt, G. Grant.

On this point it was finally decided by a full Court, that the sum of money on which this interest was claimed was of the nature of a deposit on which it was not due, as notice that interest would be demanded, as required by Act XXXII. of 1839, was given by special appellants, nor had it been shown to be payable by any existing law. The appeal was therefore dismissed.

No. 2912, Special.

NARAINDASS JUGJEEWUNDASS, deceased,
his Son and Heir JEWUNDASS .....*Appellant*,

versus

MOOGSHIA JAWUJAH ....*Respondent*.

Rupees 71–8–0.

[In a case in which a Proprietary Right to some Land was upheld, it was decided that possession should have been awarded, and not merely the sum for which the claimant had purchased the land at an attachment sale.]

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This action was laid by Naraindass in the Court of the Moonsiff of Bassein, for possession of some land and trees, and for the removal of a house newly built on the land, and the value of another which had been pulled down.

He stated that he had obtained a decree against Moogshia, in execution of which he caused that individual's property, consisting of the land and trees in dispute, to be attached and sold; that he himself became the purchaser for the sum of Rs. 3-8-0, but allowed Moogshia to retain possession; and that that individual had pulled down the old house which stood on the land, and built a new one, and then refused to give up the property altogether.

Moogshia, in his answer to the plaint, denied the claim, alleging that the property belonged to one Boorya, from whom he had purchased it for Rs. 30, and that he had expended about Rs. 300 in the erection of a new house.

The Moonsiff considered that there was no proof

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that the land on which Moogshia had built his house was part of that specified in the memorandum of the property which Naraindass had purchased, or that Moogshia had removed a house belonging to him; and considering, moreover, that the evidence went to establish that Moogshia had purchased the land in dispute from Boorya, as alleged, he rejected the claim. His decision, however, was reversed in appeal in the Court of the Assistant Judge, who recorded as follows, in weighing and deciding the matter :--

"In the first place, it was necessary to ascertain whether the land in dispute was included or not in the boundaries described in the memorandum (Exhibit No. 19); and as this had not been already done, the Court issued an order to the Moonsiff, who, after personally inspecting the place, reports (Exhibit No. 8) that the respondent's (Naraindass') house does not stand on any portion of the land specified in the memorandum. From this document (Exhibit No. 19) it appears that the land was sold by an order of the Court, and purchased by the appellant (Moogshia) in the month of August 1843. The respondent asserts that he purchased the land in 1841 from one Boorya, and in proof thereof produces a deed of sale (Exhibit No. 21); but that Boorya was the owner of the land, or by what right he sold it, has not been shown. It appears, then, that the appellant did purchase the land, and that he neglected to take possession of it; but, living as he did in the neighbourhood, he must have been aware that the respondent was building on it; nevertheless he did not interfere, but allowed the house to be completed : it, therefore, would be very hard on the respondent now to oblige

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him to pull down the house, and give up the land, particularly as he was the original proprietor of it, and it passed into the appellant's hands for a sum, according to his own showing, very considerably less than its real value. Instead, therefore, of giving him possession of the land, the Court determines on awarding him the sum for which he purchased it, viz. Rs. 3-8-0. There is no proof whatever of the respondent having destroyed an old house of the appellant. The respondent should not have built on the ground without clearly ascertaining his right to the same; the Court therefore determines to saddle him with the whole of the costs."

John Warden, Esq.

A special appeal was next presented in the Sudder Dewanee Adawlut by Naraindass, which was admitted, to try whether the lower Court had not departed from practice in having, after admitting the proprietary right in some land to be vested in appellant in virtue of a sale by the Zillah Court, instead of giving him possession of the land, awarded him only the sum for which he purchased it; the more especially as it was admitted that this sum was very considerably less than the real value of the land.

Messrs. W. E. Frere, A. Remington, M. Larken.

On this point a full Court decided that the Assistant Judge having upheld Naraindass' proprietary right to the land in dispute, ought to have awarded him possession, and not merely the sum for which he purchased the land; and his decree was therefore amended, and the land in dispute was awarded to Naraindass, Moogshia bearing all costs.

No. 2961, Special.

BAEE KHUTEEJA, Daughter of PEER MAHOMED, BAEE HUWA, his Wife, and PEER MAHOMED himself .....*Appellants,*

versus

MAHOMED SOOLEMAN.....*Respondent.*

Rupees 20.

[By Mahomedan Law, if a Dower, agreed to be paid immediately, be not paid, a woman, although she may have lived with her husband, may refuse to return to him until she receive it.]

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Mahomed Sooleman entered an action in the Court of the Principal Sudder Ameen of the Surat Zillah, to compel his wife Khuteeja to live with him, and to restrain her parents Huwa and Peer Mahomed from preventing her. The defence was, that as the plaintiff had not paid his wife her dower in full, by Mahomedan law he had no claim on her; and also that he had not acted up to an agreement entered into when they were betrothed, to the effect that he would reside with her in Surat.

The Principal Sudder Ameen, in accordance with a "futwa" of the Moolvee of the Surat Adawlut, decided that Khuteeja having once lived with Mahomed Sooleman, her plea that her dower had not been paid in full was invalid, and he accordingly decreed that she should return to him, and that her parents should offer no hindrance; which decision the Zillah Judge affirmed in appeal, agreeably to the exposition of his Moolvee, though it was, he observed, contrary to a decision passed by the Sudder Dewanee

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Adawlut in Case No. 26, printed at page 103 of the Selected Cases published in 1843.

Aggrieved by this decision, Khuteeja and her parents prayed the admission of a special appeal in the Sudder Dewanee Adawlut, which was allowed,

John Warden, Esq.

to determine whether the said decision was not contrary to Mahomedan law, in declaring that a wife, having once gone to her husband, must continue to reside with him, although her dower had not been paid; and the case going before a full Court, it was found,

Messrs. W. E. Frere, A. Remington, M. Larken.

from an answer of the Kazee of the Sudder Dewanee Adawlut, and from the decision in Selected Case No. 26, that "if the dower agreed to be paid immediately be not paid, a woman, although she has lived with her husband, may refuse to return to him until she receive her dower"; and as Mahomed had not proved that he had paid Khuteeja her dower, the decisions of the lower Courts were reversed, and Mahomed Sooleman's original claim was thrown out, and he was made to bear all the costs in all the Courts.

No. 3273, Special.

KESHOW BULAL..... *Appellant,*

versus

WASOODEO NARAYUN.....*Respondent.*

Rupees 105.

[Evidence which had been relied on by a Court of original jurisdiction having been disbelieved and overruled by a Zillah Judge in appeal,

it was held by the Sudder Dewanee Adawlut, in special appeal, that he was fully authorised in what he did, for the reasons set forth by him.]

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Keshow filed this suit against Wasoodeo in the Court of the Principal Sudder Ameen of the Konkun, to cause the removal of an attachment from off a house which he represented had been sold to him by one Sukojee, who continued to reside in it as his tenant, and paying rent under a written agreement. To this Wasoodeo made answer that the deed of sale produced was a false one made by Sukojee, his judgment debtor, collusively with Keshow, to save the house; and he also alleged that the agreement for rent was false like the deed of sale, and of long posterior date, and that the property was in the possession of Sukojee when it was seized.

The Principal Sudder Ameen considered the deed of sale a genuine document, and fully established, and he accordingly directed the removal of the attachment. In appeal, however, in which Wasoodeo contended that the deed of sale was manifestly fraudulent, as it was only registered eleven years after it was alleged to have been passed, the decision was reversed by the Zillah Judge, who recorded his opinion as follows:—

"The deed of sale produced is an extremely suspicious document, for the following reasons:—Although it is dated in 1838, it is not registered until 1849, eleven years afterwards. The witnesses cannot swear to any money having been paid in their presence to the seller; he has no accounts of the transaction to show, or, if he has, will not produce them; and the deed of agreement for the rent is only passed

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a month before the attachment issued, and after the decree was passed. Under these circumstances, the Court has strong grounds for believing this deed, although bearing a prior date, has been fabricated to defeat appellant's (Keshow's) claim, by collusion between the parties, and therefore must decline to give effect to it. The Principal Sudder Ameen's decree is reversed, and the attachment ordered to be replaced on the house."

P. W. LeGeyt, Esq.

A special appeal was next admitted in the Sudder Dewanee Adawlut, to try whether the Zillah Judge was authorised by established practice in overruling and disbelieving the evidence relied on by the lower Court, for the reasons stated by him, viz.:—1*st*, that the deed of sale was not registered till eleven years after its execution; 2*nd*, that the agreement to pay rent was passed after the decree; 3*rd*, whether the proof of the payment of the money was essential to establish the validity of the deed of sale.

Messrs. W. E. Frere, A. Remington, M. Larken.

On these points it was held by a full Court, that "the Zillah Judge was fully authorised, for the reasons stated by him, in overruling and disbelieving the evidence relied on by the lower Court," and the appeal was therefore dismissed.

No. 2945, Special.

LUKMEECHUND VUNMALEE, and one hundred and three others, Members of the Ladwa Semalee Savuk Caste ....*Appellants*,

versus

BAEE SHEO, Widow of PANACHUND ..... *Respondent.*

Rupees 50.

[A Suit for Damages for exclusion from Caste cannot be brought by a party who has been acquainted with such exclusion for twelve months.]

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Baee Sheo instituted this suit in the Court of the Sudder Ameen of Surat, representing that she belonged to the Ladwa Semalee Savuk caste, the members of which degraded and injured her by habitually excluding her from caste privileges, and all share in caste government; and that she once before filed a suit on the subject, and obtained a decree, but it had not the effect of restraining them in their injurious treatment of her, and she therefore entered this second action, laying her damages at Rs. 70. Lukmeechund, and the others against whom the suit was laid, did not appear to defend it.

The Sudder Ameen threw out the claim, as more than a year had elapsed between the date on which the cause of action arose and the date of complaint; and his decision was affirmed in appeal by the Assistant Judge, but reversed on a further appeal by the Zillah Judge, who decreed that Baee Sheo should be restored to caste privileges, or be paid Rs. 20.

This latter decision, however, not being what Baee Sheo wanted, she applied for a review of judgment in

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the Zillah Court, and the same having been granted, the case was remanded to the Sudder Ameen for a new decision on merits, the original dismissal having been founded, it was observed, on a preliminary objection; and on this occasion the Sudder Ameen awarded to Baee Sheo Rs. 50 as damages, and also decreed that the caste should restore her to caste privileges, and admit her to sign caste papers.

The caste in turn appealed to the Zillah Judge, putting in as evidence decisions of a former Judge of Ahmedabad, and of the Sudder Dewanee Adawlut in a suit on the same subject between parties of the same caste as themselves, which, they represented, was divided into two sects, holding different tenets, the plaintiff being of the Dhoondeea persuasion, and the defendants of the Tuppa.

[In the suit alluded to, it was stated by the plaintiffs that it was the usage, notwithstanding the schism, that all common engagements should be reciprocal, such as marriages, caste dinners, &c.; that in 1871 the defendants expelled the plaintiffs from the caste, desiring that they should abandon their tenets, and destroy the house used by them for their religious exercises (upashura) under pain of exclusion; that the defendants, again, since the introduction of the Company's government, passed a writing that no person was to eat with the family of Nanchund Jeoraj, when a suit was instituted in the Register's Court, and other suits also resulted.

The decision of the Zillah Judge of Ahmedabad on the occasion was as follows:—

"The Court finds that six suits have been decided in the Adawlut, the cause of action in which was

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precisely the same as that of the suit now before the Court. One of them was decided by the Acting Register, after a long investigation and examination of witnesses, and it was held to have been shown that the two sects intermarried, and ate together at caste dinners, &c.; whereupon it was decreed that the plaintiff should be admitted into the caste. Having gone through these cases, the Court determines to go into the merits of the subjects at issue in this suit, and then form its decision.

"The point at issue is, whether in a caste in which there prevail two sects, one sect has the power to exclude the other from reciprocity in privileges common to the caste; can the one sect deny intermarriage with it to the other, forbid intercourse at dinners, &c.; can one sect make a general law of exclusion to operate against the other? To come to conclusions upon these points, it would seem essential, first, to understand how, and in what, the two sects differ, then what custom has prevailed in regard to the right claimed by the plaintiffs being common to them.*

* The evidence recorded on these points was as follows:—

"The defendants are asked whether there is such variance between the Dhoondeea and Tuppa, that they cannot intermarry. They answer that it is never done, either at Ahmedabad or Cambay, but that it may be at places of less note. Also that the two sects in this city never sit down to eat together: what may be at other places they do not know.

"The Court then applied to the plaintiff. He declares that in Ahmedabad the two sects do eat together, and also intermarry. He has called some Jutees to show what is usual all over the country.

"Jethmul Roopchund deposes that the two sects of Dhoondeea and Tuppa do eat together in every part of the country, and intermarry. He has known the family of plaintiff for five generations. Plaintiff's father and grandfather held the tenets of the Dhoondeeas. Has

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"Upon examining into this case, it appears that the plaintiff pleads that he is of the same caste with the whole of the Beesa Semalee caste, and that for seven

heard that the two sects eat together in Ahmedabad, but has never seen them do so. The difference between the two sects is this: they both believe in the poostuko (writings or books) by Mahaweer—they are thirty-two in number; but besides these there are thirteen others, in which the Tuppas place faith, but which are not acknowledged by the Dhoondeeas. The Dhoondeea does not believe in images, whereas the Tuppa holds them equal with the deity. The Jutees of the Tuppa take interest for their money, and also beg money from the Tuppa, but the Dhoondeea neither begs for money nor keeps cash for interest. The Dhoondeea does not believe in the image of Bodh, which is done by the Tuppa. The grandfather Nanchund held the tenets of the Dhoondeea. The women of the Dhoondeea sect, when their monthly courses are upon them, are required to keep separate for three days.

"Nursynath Maneechund deposes that the father and grandfather of plaintiff were of the Dhoondeea sect. The Tuppa and the Dhoondeea eat together in all parts of the country. The daughters and sisters of plaintiff have married Tuppas in Ahmedabad. Has heard that both sects ate together at the deaths of the father and grandfather of plaintiff.

"Weewujeh Shoolwujeh deposes that the Tuppa believes in all the Shasters, Teekha, Choornee Busha, Nirjuktee Gurunt, Chureetos, and the Jain images. Has lived five years at Cambay. There are there forty houses of Beesa Semalee Dhoondeea, and all the rest are Tuppa. From of old time they neither eat nor marry together. The father and grandfather of plaintiff were to all appearance Tuppa. They only can tell what they were in their own houses. They used to feed the Gohurs of the Tuppa. Deponent in 1862 lived fifteen days at Sanund, at which time Nanchund used to accompany deponent to the temple. Never at any place has he seen the two sects eating together.

"The defendants observe that the priests called by the plaintiff have deposed that the grandfather of plaintiff, by name Nanchund, was of the Dhoondeea sect, but they have witnesses to show that the brother of Nanchund, named Jeoraj, performed certain religious ceremonies at Ahmedabad in the Tuppa temple, situated in the

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generations his family have followed the Dhoondeea tenets, and that the defendants held the tenets of the Tuppa sect; that it has always been usual that the

Doseewara Pol. That at Sanund there is an upashura, (dwelling-place for the Goorjees,) the Goorjee of which being a Tuppa, was, up to the year 1870, supported by the relations of Nanchund, who also paid the usual amount in money to him.

"The plaintiff denies any knowledge of the religious ceremonies; that he gave food to all—to the Goorjee, the Fukeer, and others; for it is directed by his Dhoondeea tenets to give in charity.

"The plaintiff is asked by the defendants whether a person of the Dhoondeea sect should offer money at the temple of the Tuppas? He answers—Yes, it is given. *Question.*—It is not permitted for a Dhoondeea to enter our temple, how then can he offer money? *Answer.*—Collections are made on account of the temple, and when other Buniahs give, we also give. *Question.*—Are there any other Dhoondeeas in Sanund besides you and your uncle's son? *Answer.*—There are no others in Sanund, but a number in other parts of the country.

"The plaintiff states that at Cambay his sister is married to one Unoopchund Heerachund, who is a Tuppa. That in Ahmedabad Hemchund Jychund, Wukutchund Futehchund, Raeechund Roopchund, Munchachund Jehuchund, and Deochund Kurumchund are all of the Tuppa sect, but are all married to parts of his family—his daughters, his sisters, and his father's sisters. There are many others, of whom he will prepare a list.

"The defendants observe, that the person at Cambay mentioned by the plaintiff has been put out of his caste on account of his marriage. They put in a letter dated 1st Bhuderwasood 1874, written by the Beesa Semalee caste at Cambay to the same at Ahmedabad. It states that the son of Unoopchund having contracted a marriage at Sanund with the family of Nanchund Santeedas, Unoopchund had for six months been put out of the caste, but, having paid the sum of Rs. 575, he had been re-admitted, and the marriage was allowed to proceed.

"The defendants further observe that the plaintiff had asserted that his daughter and sisters have been married in Ahmedabad. This indeed, is the case; and whilst plaintiff continued in the Tuppa faith, it was all well; but as soon as he was known to have lapsed

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Tuppas should invite the plaintiff to their dinners, and should also accept of the same from the plaintiff; that they have intermarried with his daughters; but

to the Dhoondeea, these women have ceased to visit at his house, and adhere to the rites of the Tuppa. At the time of these marriages, the plaintiff was supposed to be of the sect of the Tuppa.

"Hukumchund Wukutchund deposes that his father was married to the daughter of Nanchund, the grandfather of the plaintiff. The plaintiff, his father, and grandfather, were all of the Dhoondeea sect, but frequented the temples of the Tuppas. There are temples of the Dhoondeeas in Sanund; and the females of the Dhoondeeas are married to Tuppas. Deponent is a Tuppa. In 1870, he gave one supper to the sect. There are no Dhoondeeas in Ahmedabad. The sister of plaintiff is married to a Tuppa at Cambay. The people of Ahmedabad went to Sanund to the funeral ceremonies of some one of plaintiff's house, and ate together. The plaintiff is in the service of the Thakoor of Sanund. He fled from Ahmedabad through fear of the then Government. Deponent has not been to Sanund since this quarrel arose.

"Jeohurchund Lukhmeechund deposes that deponent's father was married from the house of Jeoraj. The daughters and sisters of plaintiff are married in Ahmedabad. Three more daughters are contracted, but not yet married. Plaintiff's father followed the Dhoondeea tenets, but frequented the Tuppa temples at Cambay. The two sects are separate. Whether they intermarry deponent does not know. In the Deesa Porwar caste they do not intermarry, but the Shrawuk and Nusree do not eat together. There are no Dhoondeeas in the Beesa Semalee caste. In the Deesa Semalee there are Dhoondeeas and Tuppas, and four other sects: they all eat together. Deponent is a Tuppa. The Ahmedabad and Jhalawur people have a different custom, and the Cambay custom prevails at Ahmedabad.

"Goolabchund Heerachund deposes that he is of the Dhoondeea sect of the Deesa Semalee caste. In his caste there are six sects. All eat together. Nanchund, plaintiff's grandfather, was openly a Dhoondeea. Deponent's caste do not eat with the Beesa Semalee.

"Raeechund Roopchund deposes that he is a Tuppa. Is married to the sister of the plaintiff. Married her, knowing her to be both a Dhoondeea and a Tuppa. Knew this four years before his marriage.

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that in Sumvut 1871 they expelled him from the caste, requiring him to relinquish the tenets of the Dhoondeea sect, and to remove the upashura which is

The Tuppas of Ahmedabad went to the marriage. The following persons, who followed the tenets of both sects, were also present :— Nanoosa Premusa, Umrasa Heerasa, Hukumsa Jaemul, Huree Lerasa. The half of the deponent's caste knew that these followed both. The marriage of deponent was forbidden to be celebrated on account of plaintiff following both. Was witness in Suit No. 5834. There are no Dhoondeeas in the Beesa Semalee caste in Ahmedabad.

"A firman put in, bearing date 27th Rujah, A. H. 1054, in the eighteenth year of the reign of Shah Jehan, whose seal it bears, declares that the Looka Mahajuns of Ahmedabad complain against Santeedas and Soordas, and other Mahajuns, that they do not intermarry with and eat with complainants. It is ordered that they may intermarry and eat as they please, and officers of the city are directed to allow them to act as they think proper. This order is addressed to Deesa Sheikshah Jahan.

"A certificate signed by forty-seven persons of the Beesa Semalee caste at Cambay, states that the Tuppa caste at Cambay is separate from the others ; that the Tuppas eat separately, and the Dhoondeeas and Lookas are also separate from them—these two eat together. When there is a dinner from the Nokarshee sect, then five sects of the Tuppas eat together, but the Dhoondeeas and Lookas are not invited. There are about seventy-five houses of these two sects at Cambay, but no Tuppa intermarries with them. Unoopchund Heerachund's son was contracted to the daughter of Nanchund Santeedas of Sanund. For this he was six months expelled his caste, but the contract could not be dissolved. He was therefore fined Rs. 525, and re-admitted into the caste, and the marriage permitted.

"Jetha Tarachund deposes that there have always been temples of the Dhoondeeas at Sanund. The plaintiff's ancestors have for seven generations followed the Dhoondeea tenets. Deponent is a Dhoondeea. Previous to 1871 the Dhoondeeas and Tuppas of Sanund used to eat together. In 1869 the mother of Chanda Mehta died. At the ceremonies for her, all the Dhoondeeas and Tuppas of Sanund and Ahmedabad ate together. In 1877 the daughter of Hukumbhaee came from Cambay to Sanund, to be

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at Sanund village, on doing which he would be admitted. Since the introduction of the English Government, a writing has been entered into by the

married. There were two Tuppas with the procession, one named Chunha, and the other deponent does not remember. They frequented the Tuppa temples, and from that cause deponent says they were of the Tuppa sect. The Dhoondeeas only go to the Tuppas' temples on particular occasions, not every day. Poonja Tokur's son's marriage was with the family of plaintiff. He is a Tuppa. At that time the two sects ate together at Sanund, but owing to this quarrel the Tuppas of Sanund did not join in this. In 1869 the ceremonies were performed for Lala Somchund, when the Dhoondeeas and Tuppas of Sanund and of Ahmedabad ate together. In 1877 the son of Thukur Mehta, a Tuppa, married into a Dhoondeea family at Wurwun. The son of Adhajee Mehta, a Tuppa, married into the family of Futehchund Shameedas, a Dhoondeea, at Sanund. The son of Chanda Gandee, a Tuppa, married into the family of Shungernee, a Dhoondeea, at Dangudra village. The son of Neema, a Tuppa, married into the family of a Dhoondeea. At Limree, the two sects have always eaten together, and intermarried. At the ceremonies for Nanoosa, the plaintiff's grandfather, the Tuppas and Dhoondeeas of Ahmedabad and other places always ate together. The brother of plaintiff, named Manekchund, a Dhoondeea, is married into the family of Mukun Dewa, a Tuppa, at Patun village. Shama, the uncle of plaintiff, is married to a Tuppa. The plaintiff gives money to the temple of Wuja Ansoor, a temple of the Tuppas. Plaintiff belongs to the sect of Wuja Ansoor, but his tenets are those of the Dhoondeeas. The deponent was at a dinner at the house of Wagjee Kotaree at Wurwan, and the Jutees of the Tuppas also came and ate. The two Tuppas who came of the Beesa Semalee caste to the marriage of Poonja Tokur at Sanund were Ghujla, and the wur, or bridegroom. There were other Buniahs there, whom deponent does not know. The father and mother of the bridegroom were not present. The bridegroom bathed himself in larasa water [water from the plaintiff's house, not brought from another place]. The Lookas and Dhoondeeas eat together at Cambay. The Tuppas there are separate. In 1870 plaintiff came to Ahmedabad on the death of Sakurchund. He returned to Sanund next day. Knows not whether he fled on the

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defendants that they would not invite, or accept of invitations from the family of Nanchund Jeoraj; that in consequence a suit was filed by the brother of plaintiff, named Lera, which was decided by the Acting Registrar (Mr. Giberne) that he should be invited by the caste. A second agreement was upon this entered into by the defendants not to conform to this decree. The plaintiff represents that he has unjustly been put

complaint of the Tuppas, or whether of his own accord. The marriage of the son of Udhajee Mehta was completed at the house of Futehchund's maternal aunt, on account of her being a Tuppa, and the plaintiff had been turned out of his caste. The daughters of the Jhalawar [name of a district including Limree Wurwan] are married to men at Ahmedabad and Sanund. The daughter of Sakurchund Heerachund, the maternal aunt of plaintiff, is married in Ahmedabad, to whom deponent does not know. Deponent is married into a Tuppa family at Chunear village.

"The plaintiff declares that his witnesses are to show that the two sects of the Dhoondeeas and Tuppas eat together and intermarry in every part of the country, and that till now they ate together at Ahmedabad; that he is a follower of the Dhoondeea tenets, and that his daughters and sisters are married to Tuppas at Ahmedabad; that the remaining witnesses are to the same effect as those who have been examined.

"The Court observed that in the city of Ahmedabad there were none of the Dhoondeea sect in the Beesa Semalee caste—why should he expect to eat with these Tuppas?

"He answers that he has always been of the Dhoondeea tenets, and has eaten with the Tuppas, and the women of his family have married with them; and that even since he has been put out of the caste, three of his daughters have been contracted in marriage.

"The Court declines to call the remaining seven witnesses of the plaintiff. Sufficient evidence has already been taken to the points mentioned by plaintiff. They are therefore dismissed.

"The defendants declare that their witnesses are to show that the defendants ate with plaintiff as long as he held the Tuppa tenets, and married his daughters, but that the plaintiff was put out of the caste as soon as his becoming a Dhoondeea was known."

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out of his caste, and sues for Rs. 10,000 as damages for loss of character, and prays that he may be re-admitted into the caste, and that letters may be written to the different villages to counteract the letters formerly written by the defendants, in consequence of which the plaintiff has not been admitted to the caste dinners.

"The defendants answer that Sunchun Santeedas was of the Tuppa persuasion, and that the plaintiff and his relations may have entertained the Dhoondeea tenets, but that it must have been in secret, and that when it was discovered that they did so they were expelled from the caste; that afterwards, on their adopting the Tuppa tenets, contracts of marriage may have been entered into with them, and that as contracts of marriage cannot by the usage of the caste be dissolved, the marriages were allowed to be completed; but they desire that the plaintiff may be required to prove that he has ever been allowed to eat with the caste in Ahmedabad. They then state that in Sumvut 1871 the plaintiff, having acted in an unjustifiable manner, and it being found that he followed the Dhoondeea tenets, he was thereupon expelled by the Tuppas; that there is very great variance between the sect of the plaintiff and that of the Tuppas and of the Hindus, and that all of that sect have been separated from the others; that in the caste of the defendants in Ahmedabad there are no Dhoondeeas, and that therefore many have sworn never to eat or intermarry with the plaintiff and his family.

"The plaintiff replies that his family have held the Dhoondeea tenets for seven generations, and that only the two sects of Dhoondeea and Tuppa are

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known among the Shrawuk Buniahs; nor is there any difference in the articles of food which are eaten by the two; nor has the caste any right of interference as to which sect any person shall belong; that allowing any such right to exist, how has it happened that they have permitted his ancestors to proceed thus, who all died in the Dhoondeea persuasion, and how has the caste intermarried with their daughters?

"In Suit No. 5834, it was shown that they did not eat together, and give mutual invitations; and if the defendants can prove that the plaintiff has agreed to adopt the Tuppa tenets, let them produce the documents; that the number of children, grandchildren, sisters, and other relations of the plaintiff in Ahmedabad, amount to about two or three hundred persons, but through fear of the defendants no one dares to say anything; that both at Sanund and in all parts of the country the Tuppas and Dhoondeeas eat together and intermarry, and the caste in this city do the same with them; and the plaintiff is held to be out of his caste at Ahmedabad only.

"The defendants rejoin that in none of the six Shasters and eighteen Puranas is the Dhoondeea sect mentioned, which, neglecting these Shasters, act in irregular ways; that during the time when women of the Shrawuk or other Hindus have their monthly courses upon them, no man is to approach them during a term of four days, and that if any one should do so he must himself go to bathe, and wash his clothes. Also, whereas these Dhoondeeas eat food dressed by such women, and the Jutees of the sect eat food from the hands of persons with whom no others will even drink water, the Dhoondeeas feed these

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Jutees—and these are the worst of impurities; but besides these the Dhoondeeas have many improper practices. They further state that the ancestors of the plaintiff were not of that sect, but that when they had followed these tenets in private, and had once before been discovered, they had been expelled, and had only been re-admitted on consenting to maintain the Tuppa tenets, and to worship in their temples; that the plaintiff still gives food and clothing to the Gohurs of the Tuppas, but having set aside the Shasters, and openly assumed this persuasion, has been expelled the caste. The decree passed in No. 5834 has been appealed from; they therefore pray that the priests of both parties may be examined.*

* The rest of the evidence on these points was epitomised as follows:—

"Copies of six decrees are filed by plaintiff, viz. Nos. 2900, 2901, 2902, 2903, 2962, 5834, from which it is found that this plaintiff and some of his relations have each separately sued part of the present defendants on account of their expulsion from the caste. The decrees in these suits were passed by the Registrar Mr. Norris, and the Acting Register Mr. Giberne, and run, that as the suits were not laid against the whole caste, but the defendants were only the principal persons of it, that they should bear a fifth share of the amount sued for as damages.

"Appeals have been preferred from the whole of these decrees, and have not yet been determined, but have been laid aside, waiting the decision of the present suit.

"The plaintiff called two Jutees of his sect, and the defendants one of theirs, whose evidence was taken.

"The Jutees, on part of plaintiff, deposed that the plaintiff's ancestors were of the Dhoondeea persuasion, and that in every part of Cambay the Dhoondeeas and Tuppas eat together, and intermarry; that the points of difference between the two sects are that the Tuppas put faith in the images of the deities, which the Dhoondeeas do not; that the Dhoondeeas receive only the writing of Mahaweer Sama, but the Tuppas receive others also.

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"Upon consideration of all that has been advanced it appears, that notwithstanding the length into which the proceedings in this case have run, the question to

"The Jutees, on part of defendants, deposed that the Tuppas admit the whole of the Shasters and all the images of the deities; that the ancestors of the plaintiff were openly and professedly of the Tuppa sect, and that in Sumvut 1862 he was fifteen days at Sanund, during which time Nanoosa frequented their temple, and gave food and cloth to the Gohurs of the Tuppas; that in the Beesa Semalee caste he has never seen the Tuppas and Dhoondeeas eat together.

"The defendants produced a writing sent from the caste at Cambay to the caste at Ahmedabad. It bears that at Cambay, among the Beesa Semalee caste, the Tuppas are separate, and the Lokas are separate; that they have no intercourse; that the son of a Tuppa by name Unoopa Heerachund was contracted in marriage in the family of Nanchund at Sanund, for which reason Unoopa was during six months expelled from the caste; but that as from the usage of the caste a marriage contract cannot be broken, the marriage was allowed to be completed on paying a fine of Rs. 525.

"The defendants pleaded that in Sumvut 1855 Jeoraj attended the temple of their sect in Ahmedabad; that the plaintiff's sect do not attend to the rules respecting women; that the Tuppas and Dhoondeeas at Cambay have no intercourse, and called eleven witnesses to prove this.

"The plaintiff called fourteen witnesses to show that his family have always followed the Dhoondeea persuasion, that the women have been married to persons in Ahmedabad; and that it is usual for both sects to eat together there.

"Five of the persons called by the plaintiff were examined: four of these were Tuppas. They deposed that the plaintiff and his relations and ancestors held the tenets of the Dhoondeeas, but also frequented the temples of the Tuppas; that their females are and have been married at Ahmedabad; and that some have been betrothed, whose marriages have not yet been completed. The remaining witness was a Dhoondeea, who deposed that the family of plaintiff have always been Dhoondeeas, and that until the year 1871 the Dhoondeeas and Tuppas at Sanund ate together, and that Tuppas from Ahmedabad were of the number.

"The plaintiff representing that all the other persons called by

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be determined is simple, viz. whether the defendants shall or shall not be compelled to admit the plaintiff and his family to their caste dinners, and

him are to this purpose, the Court declines to call them. On the part of defendants three other witnesses were examined. Of these one deposed that in Sumvut 1855 Nanchund Santeedas performed worship in the Tuppa temple at Ahmedabad called Numdersama; that the Tuppas of Ahmedabad follow the same rules as the Tuppas do at Cambay.

"A second deposed that in 1855 Jeoraj Santeedas worshipped at the above-named temple.

"The third, a Native of Sanund, that the plaintiff frequented the Tuppa temple at Sanund, and was of the Tuppa sect until Sumvut 1870; that since his expulsion he has betrothed three of his daughters to Dhoondeeas, the marriage of one of whom has been consummated; that the Tuppas at Sanund intermarry with the Dhoondeeas, and that after the completion of the marriages such daughters of Dhoondeeas follow the rules of the Tuppa sect; and that the usages of the Tuppas at Cambay and Ahmedabad are the same.

"The defendants presented a firman in the Persian language, dated A. H. 1054. It states that the Lookas of Ahmedabad have prayed to the imperial Government that Santeedas and Soordas did not eat with them, or connect themselves with them. It was ordered that this was a matter in which each should follow his own inclination, and therefore, if both agreed to do so, they were permitted to form connexions together, and to eat together; but should this business proceed further, it must be determined according to the law.

"The defendants presented a certificate from the Beesa Semalee caste at Cambay. It declares that the Dhoondeeas and Tuppas do not eat together.

"The defendants produced two chopries, being the accounts of the Tuppa temple at Sanund, in which money is entered as received from Nanchund.

"The plaintiff filed five papers, the first dated Sumvut 1874, 3rd Magshur Wud, written from Ahmedabad by Joeta Jychund and Hemchund Jychund, to Jeoraj and Nanchund at Sanund. It states that these persons had procured a jasoos from the Sirkar, and had sent for the Gohur of the caste, and had gone round the streets,

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other rights of the caste. The plaintiff is a native of Sanund, in the Dholka Purgunna; the defendants are the whole of the Beesa Semalee caste in the city of Ahmedabad. The defendants, about seven years ago, turned the plaintiff out of caste, on account of his professing the Dhoondeea tenets. The whole of the caste in Ahmedabad are Tuppas. The plaintiff declares that for seven generations his family have always professed the Dhoondeea tenets. The defendants deny this, and also declare, that if it has been the case, it has been without their knowledge, and that if they had known it, the daughters and relations of the plaintiff should not have been permitted to have been married into their caste.

declaring to all that they (Jeoraj and Nanchund) were expelled the caste. They are, therefore, required to have this settled.

"The second paper is dated Sumvut 1874, 13th Poush Wud, written from Ahmedabad by Foolchund to Jeoraj and Nanchund at Sanund. It states that the Sirkar had sent for the caste, and declared that what had been represented by Bhugwundas was false, and that things were to go on as usual.

"The third paper is dated Sumvut 1847, 3rd Chytur Wud, written by Mungul Ruga and others to Nanchund and Jeoraj. It states that expense had been incurred in consequence of this dispute having been brought before the Sirkar, which the writers had received, and that the whole was now settled.

"The fourth paper is dated Sumvut 1857, 3rd Falgoon Shood, written by the Buniahs of Sanund to Kuyajee, the Thakoor of Sanund, that if any caste dispute shall arise, they shall be responsible, and shall pay a fine of Rs. 500.

"The fifth paper is dated 20th October A. D. 1817, written by Mr. Ironside, the Judge of Kaira, to Bapahajee Damodur, the Soobadar of Ahmedabad, that he should arrange matters between Nanchund Santeedas of Sanund and the Beesa Semalee caste at Ahmedabad.

"Beyond this there is nothing brought forward on either side."

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"From the evidence it appears to the Court sufficiently well established that for three generations the family of plaintiff has adopted the Dhoondeea tenets, but without relinquishing those of the Tuppa, and also that they have continued at all times to frequent the temples of both sects; and this being the case, it is difficult to reconcile to truth the asserted ignorance of the defendants. In Ahmedabad there are no Dhoondeeas in the caste, but in other places, where there are both, in some the two eat together and intermarry, and in others, as for instance in Cambay, they do not unite in any way.

"Upon the consideration of this fact, and of there being none of the Dhoondeea sect in this city, the Court is strongly disinclined to come to a resolution to compel the defendants to re-admit the plaintiff into their caste, and yet, at the same time, must consider it a great hardship upon the plaintiff to be kept out of it, as the Court cannot but believe the assertion of the caste of their ignorance of the plaintiff having adopted the Dhoondeea tenets to be unfounded, and therefore the marriages which have for many years past been contracted between the plaintiff's family and the caste must be admitted as at least a tacit consent on the part of defendants.

"As the adoption of these tenets has, however, certainly at no time been openly avowed by the ancestors of the plaintiff, nor by himself until this time, the merits of the cause stand rather in favour of the defendants; and in order to determine with justice to both parties, it is decreed that the Beesa Semalee caste in the city of Ahmedabad shall not be compelled to re-admit the plaintiff and his family to caste dinners,

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and other rites of the caste, but that such persons of the caste resident in Ahmedabad, who may be disposed to extend their invitations to the plaintiff, shall be at liberty to do so; and that it shall be no excuse to the remainder of the caste for not attending, and no objection shall be made by them on this account, but that they shall attend as they would do if the plaintiff was not invited. Also in like manner with marriage: those who already have intermarried, or who may hereafter intermarry, with the family of the plaintiff, shall not be molested for so doing, nor shall the caste in Ahmedabad on any occasion expel from their caste, or in any manner disturb such persons of the caste who may go to the house of the plaintiff, who may drink water with him, and have intercourse and associate with him and his family in every way that such persons may think proper. On the other hand, it shall be quite at the option of every man to call the plaintiff and his family to the dinners of the caste or not, and the plaintiff and his family shall have no ground for damages in consequence of being upon any occasion omitted, or of any persons refusing to drink water with him, or to associate with him.

"But it is further decreed, that if the plaintiff shall relinquish the tenets of the Dhoondeea sect, and retain and adhere to those of the Tuppas only, that in that case he and his family shall be admitted to the full rights of the caste in every respect, and shall be entitled to sue for damages for any slight towards him from the caste, or from any individual of it.

"In regard to costs of suit, as both parties appear to have been nearly equally to blame, it is decreed that each party bear their own costs."

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This decision having been appealed to the Sudder Dewanee Adawlut, the single Judge, Mr. James Sutherland, recorded as follows:—

"The parties in this case are Shrawuks, and belong to distinct sects of that tribe, the appellant professing the Dhoondeea tenets, and the respondents thereof the Tuppa; they also bear these terms as their distinguishing appellations. It appears that up to 1871, whatever may have been his real profession of faith, appellant was in the enjoyment of all the privileges of caste that belonged to the Tuppas, and was received as such by the respondents without any hesitation. Appellant alleges that he always publicly favoured Dhoondeea principles, while respondents assert, that if he actually leaned to that sect, it was unknown to them, and done clandestinely; that in 1871, on appellant openly showing himself to be of the Dhoondeea sect, respondents came to the resolution to expel him from caste intercourse, until he fully embraced and professed the Tuppa principles only. After full investigation, the Judge of Ahmedabad, in which Zillah the case was laid, decreed that appellant should be still admitted to the caste by whoever chose to associate with him of the Tuppas, and that he should be restored to all its privileges whenever he embraced and professed the Tuppa doctrines alone. With this decision appellant is dissatisfied, and appeals generally on the ground that there is no new act to be charged to him why he should not be fully restored to his caste, and takes up the grounds already gone into in the lower Court.

"After maturely considering the whole of the proceedings held in this case, the sitting Judge does not admit the arguments of appellant to have sufficient

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weight to impugn the decision come to by the Zillah Judge in support of the caste in excluding appellant, unless he abandoned his sect and came over to them, and which is in every respect exceedingly favourable to him. The case is that of one against many; and whatever may be the custom of the Tuppas elsewhere in their intercourse with Dhoondeeas, as no instance of inconsistency in the Ahmedabad Jumaut is given, when another Dhoondeea has been preferred to the appellant and admitted to the privileges of their caste, the Ahmedabad Jumaut must be supported in the act, which they had the full power to come to. As the case is of some importance, for the satisfaction of appellant it is referred for the consideration of a full Court."

The full Court, consisting of Messrs. John Romer and Edward Ironside, gave judgment as follows:—

"The Court, after maturely considering the merits of this case, concur in the view taken of it by the Second Judge, and accordingly confirm the decision of the Zillah Judge at Ahmedabad, passed on the 11th December 1820. Costs in the appeal to be borne by the appellant."]

The Zillah Judge of Surat having considered and recorded the above documents put in as evidence, affirmed the decree of the Sudder Ameen in the suit of Baee Sheo, whereupon the original defendants prayed the admission of a special appeal in the Sudder Dewanee Adawlut, which was granted, to determine, 1*st*, whether the lower Courts had not decided contrary to Clause 3rd, Section II. Regulation V. A. D. 1827, in decreeing to respondent the right of participation in caste communications, with her exclusion from which

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she was shown from the date of the instrument on which the suit was founded to have been acquainted twelve months before the suit was filed, though in a supplementary plaint she alleged that her original assertion in respect to the date of such instrument was an error; 2*nd*, whether the Zillah Judge had not, in a caste question, exceeded the authority vested in him under Clause 1st, Section XXI. Regulation II. A. D. 1827.

Messrs. W. E. Frere, A. Remington, M. Larken.

The case then went before a full Court, when it was held, that as the plaintiff had been acquainted with her exclusion from the caste more than twelve months before the suit was filed, the Judge had decided contrary to Clause 3rd, Section II. Regulation V. A. D. 1827; and that the second point certified for consideration did not arise for decision; and under this view the decrees of the lower Courts were reversed, and Baee Sheo's original claim thrown out, she bearing all costs.

No. 2987, Special.

DAJEE GOVIND DESHPANDY.....*Appellant*,

versus

SHREEPUT BAPOO oorf BHAOO JOSHEE....*Respondent*.

Rupees 20.

[Held that a Judge is competent, under Clause 1st, Section XXIV. Regulation IV. of 1827, to refer any point or points in a suit to a Punchayut, and that that provision is not restricted, so as to exclude the reference to them of any question depending upon local circumstances, upon which he may require their assistance.]

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Dajee represented himself as owner of a half share of a house by purchase, and entered this action to

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restrain Shreeput from interrupting him in his use of a piece of ground adjoining it, which the latter person claimed as belonging to the other half share of the house held by him in mortgage.

The Moonsiff of Joonere, by whom the case was tried, decided in favour of Dajee, whereupon Shreeput appealed in the Court of the Assistant Judge, who expressed his views of the matter as follows :—

"The lower Court has noticed that in appellant's mortgage deed (No. 26) no specification is made of yards, out-buildings, &c. adjoining, as mortgaged with half the house, while in respondent's deed of purchase (No. 5) it is expressly stated, that besides the half of the house, out-buildings, &c. contiguous are sold. It is not clear whether the lower Court on this ground held respondent's claim proved, considering that all the open space surrounding both halves of the house was respondent's; but if the decision rests on this inference, it is manifestly erroneous, for the deed of purchase (No. 5) cannot be considered to be a legal conveyance of more than half the yard and out-buildings in question, since the seller had a title to no more. The only question, therefore, is, whether the piece of land in dispute falls within the limits of the portion which was lawfully transferred to respondent by the said deed, and on this question the Court finds no satisfactory evidence. The Moonsiff, indeed, has stated, after an inspection of the property, that the disputed spot would fall within respondent's portion, but it is not even shown in the plan (No. 20) whereabout the disputed spot is."

Under this view, the Assistant Judge remanded the case to the lower Court, in view to proof being

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recorded to show that the land which Dajee claimed belonged, at the date of the deed (No. 5), to the parties who executed that deed; and the Moonsiff having again decided in favour of Dajee, Shreeput a second time appealed to the Assistant Judge, who on this occasion recorded as follows:—

"From the plan (No. 20) in the Moonsiff's amended decree, the Court finds that no portion of the ground claimed by respondent lies beyond the limits of lines drawn in continuation of the east and west walls of his house. The only question is whether, as the houses occupied by both parties formerly belonged to one family, and the space behind appellant's house is much less than that behind respondent's, each party should enjoy such portion of the said space as lies immediately behind the house occupied by him, or whether it should be divided equally between the two. The Court thinks it important to decide this point according to the custom of the country, and postpones the case, that an experienced jury may be called, and the Shastree (who is absent) consulted."

Nothing conclusive was elicited on the point by a reference to the Hindu Law Officer; but a jury of the most intelligent and well-informed Natives procurable having been requested to give their opinion, and they having given it in favour of Shreeput's right to one half of the space lying behind his and Dajee's house, the Assistant Judge, in conformity therewith, reversed the judgment of the Moonsiff, with all costs on Dajee throughout.

M. Larken, Esq.

This individual then presented a special appeal in the Sudder Dewanee Adawlut, which was admitted, to try whether the Assistant Judge had not departed

from law and practice in giving judgment under the award of a jury assembled at Poona, while the land in dispute was at Joonere, it being competent to him to have ordered a local investigation, under the provisions of Section XXXI. Regulation IV. of 1827.

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On this point the Court decided that "the Judge is competent, under Clause 1st, Section XXIV. Regulation IV. of 1827 to refer any point or points in a suit to a Punchayut; and that that provision is not restricted so as to exclude the reference to them of any question depending upon local circumstances upon which he may require their assistance, though he is under Section XXXI. granted further powers, and enabled to send a special commission to make any necessary investigation on the spot. The Assistant Judge, then, being left a discretion, the Court do not think it is competent for them to control the use he makes of it; and under this view the appeal is dismissed, with costs on appellant."

Messrs. W. E. Frere, A. Remington, M. Larken.

No. 3293, Special.

BAEE JUMNA, Daughter of HURRYBAEE GOKULDASS.....*Appellant*,

versus

BAEE DHUNKORE, Widow of MANIKLAL, and Guardian of JUMNADASS, a Minor...*Respondent.*

Rupees 200.

[Held that usage permits a Sale of Property by a husband to his wife for full consideration, and when there are no grounds to suspect fraud.]

Baee Jumna sought the removal of an attachment

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from off a house, which she stated she had purchased from her husband; Baee Dhunkore, for the defence, contended that the alleged sale was fictitious.

The case was tried by the City Moonsiff of Surat, who rejected the claim, holding that it had been shown that the sale was collusive to save the property of Baee Jumna's husband, against whom Baee Dhunkore had obtained a decree of Court; but his decision to this effect was reversed in appeal in the Court of the Assistant Judge, who recorded his opinion as follows:—

"The Court finds that the site in dispute was mortgaged by Hurrybaee to Jumna on the 17th August 1823, and that the mortgage bond was registered on the 11th October of the same year. There was at the time a building upon the ground, which was subsequently burned down. The amount for which the property was mortgaged was Rs. 2,000, and the ground of its being mortgaged, that Jumna had given up the value of her pulla* to Hurrybhaee, for the purpose of enabling him to provide for the marriage of their children. Thereafter, that is on the 23rd June 1849, Hurrybhaee sold the site in dispute to Jumna, on the ground that he was unable to redeem it. This deed is registered on the 16th July following. The argument for Dhunkore is that her husband's dealings with Hurrybhaee began in 1846, upon which she got a decree in 1849, and that Jumna's claim has been got up merely to prevent the satisfaction of this claim. The Moonsiff has taken this view; but the Court is of opinion, that whatever doubt there might be about the deed of sale in June

* Puloo, dowry.

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1849, there can be no question at all that the mortgage in 1823 was not entered into with the view of obstructing a claim which did not come into existence for nearly a quarter of a century afterwards. The Court therefore reverses the Moonsiff's decree, and finds for Jumna, ordering Dhunkore to raise the attachment, with all costs."

From this decision a special appeal was admitted in the Sudder Dewanee Adawlut, to try whether the Assistant Judge did not depart from law in ordering Baee Dhunkore to raise her attachment from the property, which was, the Assistant Judge admitted, only mortgaged to Baee Jumna, whose interests as mortgagee could not be affected by the attachment; on which point it was the opinion of a full Court that "the Assistant Judge had waived the question as to whether the property had been sold, on the supposition that it was immaterial, as regarded the decision, whether the property was sold or merely mortgaged, overlooking, apparently, that while mortgaged property may be attached and sold (burthened of course with the mortgage) in execution of a decree, the effect of an absolute sale would be the raising of an attachment levied on the supposition that the property still belonged to the person who had parted with it by sale." It was held, therefore, to be most important in this case to determine whether there had been a sale or not; an essential point, in which inquiry would have been whether a sale, or even a mortgage, could be executed between man and wife, Baee Dhunkore in her original answer having pleaded that the relation in which the parties stood to each other of itself rendered such a transaction invalid. Under this view

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the decree of the Assistant Judge was annulled, and the case was remitted to the Zillah Court of appeal, to be replaced on the file where it originally stood, for re-trial.

It was accordingly taken up by Mr. J. Gibbs, who had succeeded the Assistant Judge who tried it in the first instance; and judgment was delivered in the matter as follows, after the opinion of the Hindu Law Officer of the Surat Adawlut had been obtained :—

"The question on which, in the opinion of the Acting Assistant Judge, this case must be decided, is the broad principle of the advisability or otherwise of allowing mortgages, sales, and other such business transactions, to take place between husband and wife. The Hindu law has been consulted, and the answer obtained shows its whole tenor is against such transactions. The Vukeels of Baee Jumna, however, urged the custom of the country ; and thereupon the Acting Assistant Judge adjourned the case, to enable them to bring cases of it. They failed, for the two cases which they produced, although giving decrees in favour of such transactions, did not show that the question had been raised. Application was then made to summon four shroffs on the point, but the Acting Assistant Judge was of opinion that a custom by which, according to Baee Jumna's Vakeel's own admission, fraud was committed in ninety-nine cases out of a hundred, should not be allowed by a Court of Justice to be established on such evidence as that, and in consequence refused the application. The present, therefore, is a case, the main point of which, as above stated, involving as it does the interests of a large portion of the mercantile community, should, in the opinion of the

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Acting Assistant Judge, be decided according to 'justice, equity, and good conscience'; and in accordance with this view, the Acting Assistant Judge, feeling that by permitting such dealings he would be setting up an opinion contrary to the principles of English law, and one which would open a legal door to enable debtors to make a fraudulent appropriation of their property from their lawful creditors,—justice, which should always look on both sides of the case, being, in the opinion of the Acting Assistant Judge, upheld in the present instance by the attachment being raised, as Baee Jumna, supposing her transactions with her husband to be honest, having chosen to imitate and follow the way of fraudulent persons, by so doing, in suffering loss, is most assuredly justly punished for her folly; justice, therefore, and equity, being both on the side of Baee Dhunkore, a good conscience follows their steps. The Acting Assistant Judge, therefore, confirms the decree of the Court below, the Moonsiff of Surat, and orders Baee Jumna to bear all costs."

On this Baee Jumna presented a special appeal in the Sudder Dewanee Adawlut, which was admitted, to try whether the Assistant Judge had not departed from law and usage in declaring that no sale of property between a Hindu husband and wife should be sustained, by reason of the facility it would afford to fraudulent conveyances; it appearing to the sitting Judge that a Hindu wife may, with her streedhun or dowry, purchase real property from her husband; and it being averred in this case, and not apparently controverted, that the sale was effected with the dower money of Baee Jumna.

P. W. LeGeyt, Esq.

This point having been weighed and considered by a

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Messrs. W. E. Frere, A. Remington, M. Larken.

full Court, it was held that usage permits a sale of property by a husband to his wife for full consideration, and when there are no grounds to suspect fraud; but as the Moonsiff had decided that the sale in this case was collusive, and the Assistant Judge in appeal had passed no decision upon that point, the Court determined to reverse his decision, and return the suit for re-trial, in order that it might be proved beyond controversy from whence Baee Jumna obtained the money or property with which she purchased the ground in question, and how her husband disposed of that money or property; and upon that, that a new decree might be passed.

No. 3299, Special.

RAMSHET bin KRISHNAPA ..... *Appellant,*

versus

BABAJEE TRIMBUK..... *Respondent.*

Rupees 30.

[Held by the Sudder Dewance Adawlut, that in a case in which an Attachment was raised from off certain Property burthened with a Mortgage, the decision was contrary to sound practice and precedent.]

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Babajee, in instituting this action for the removal of an attachment, represented that Ramshet held a decree against one Somajee bin Bhewrao, in virtue of which he had attached a house in the village of Sopa, which house had been mortgaged to him, Babajee, by the said Somajee, under date 7th March 1849, and

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given into his possession: he prayed, therefore, that the attachment might be raised.

To this Ramshét replied, that the suit was the result of a combination between Somajee and Babajee; and that when the attachment was placed on the house, the said Somajee was living in it.

The case was heard by the Principal Sudder Ameen of Poona, who considered that the mortgage bond produced by Babajee was proved by the evidence of two witnesses; and that the lease under which Somajee was living in the house as his tenant was also proved by the evidence of two other witnesses: he further considered that the plea of Ramshét, that the mortgage from Somajee to Babajee was not a *bonâ fide* transaction, had not been established; and although it was not proved that Babajee had actually received rent from Somajee, yet this was not a sufficient reason for rejecting the claim. Under this view, the attachment was ordered to be raised.

Whereupon Ramshét appealed to the Zillah Judge, alleging that although the mortgage bond might have been proved, yet there was no evidence of possession; and that as it had not been proved that Babajee had received rent, the deeds of lease were of no use as evidence.

The Zillah Judge, however, observed that Ramshét admitted that the mortgage bond was proved, and that the rest of the objection was removed by the decision of the Sudder Dewanee Adawlut in Case No. 2972, at page 96 of "Selected Cases," wherein it is laid down that possession is not required to render a mortgage bond valid. The decree, therefore, of the Court below was confirmed.

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John Warden, Esq.

Messrs. W. E. Frere, A. Remington, M. Larken.

Ramshét then prayed the admission of a special appeal in the Sudder Dewanee Adawlut, which was admitted, to determine whether the lower Court had not departed from practice (No. 2813, "Morris' Reports,") in raising an attachment from property because it was burthened with a mortgage; and the point having been tried, it was decided that the Zillah Judge's decree was contrary to sound practice, and the precedent of Case No. 2813 referred to. The decrees of the lower Courts were therefore reversed, and the attachment ordered to remain, Babajee being made to bear all costs.

No. 2633, Special.

SONABAEE, deceased, Daughter of RUTUNJEE, her Heirs BAPOOBHAEE and KUSROBHAEE, her Sons, and MEETHEEBAEE and GOOLBAEE, Daughters of KOOVERBAEE ..... *Appellants,*

versus

BRIJRUTUNJEE GOKOOL OTCHOWJEE MAHARAJ, deceased, his Heir INDOONATHJEE MAHARAJ .....*Respondent.*

Rupees 5,025.

[A having obtained a Decree in Appeal from the Privy Council against C, got an order from the Sudder Dewanee Adawlut to receive the amount from D, the security of C for the payment of Costs in the said Appeal, and in virtue thereof attached certain property belonging to D; whereupon his heirs entered an Action to raise the

Attachment, on the ground that they had a mortgage of the property. Held, that because A had obtained an order from the Sudder Dewanee Adawlut to receive from D the amount awarded by the decree of the Privy Council against C, the said D was not prevented from mortgaging property, even though he had passed a security bond for costs.]

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This action was instituted by Sonabaee, her son Bapoobhaee, and her sister's daughters Meetheebaee and Goolbaee, to cause the removal of an attachment from off some title-deeds securing certain claims which they held in mortgage from Poonjiabhaee, the brother of Sonabaee.

They represented in their plaints that Brijrutunjee had obtained a decree from His Majesty the King in Council for Rs. 6,001 against one Suvaichund Namidass, whose security's security for the payment of costs was Poonjiabhaee Rutunjee Paruk; that the said Poonjiabhaee having claims against the heirs of Jamsetjee Muncherjee, Desaee of Nowsaree, and the deeds relating thereto being under mortgage to a creditor of the said Poonjiabhaee, named Nuserwanjee Pestonjee, Brijrutunjee caused them to be produced and attached, though they were mortgaged by Poonjiabhaee to the plaintiffs, in a bond dated the 3rd July 1842; that the said Poonjiabhaee having recovered a debt, discharged what he owed to Nuserwanjee, and gave the remainder, Rs. 13,302-5-8, in part discharge of their (plaintiffs') mortgage bond, leaving a balance still due; that in their mortgage bond Poonjiabhaee provided, with regard to his claims against the heirs of the Desaee of Nowsaree, that after paying Nuserwanjee's dues, the balance should be applied towards the liquidation of their (plaintiffs') claims; that when Nuserwanjee's dues were discharged, as above stated, Poonjiabhaee requested Nuserwanjee to make over the

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deeds, &c. to them (plaintiffs), but he declined to do so; and that Nuserwanjee's claims having been satisfied, they (plaintiffs) had a right to receive their claims from the heirs of the Desaee of Nowsaree, according to the terms of the deed. They therefore filed this suit for Rs. 5,025, to raise Brijrutunjee's attachment from a kubala for Kolusna village, for Rs. 25,000, dated 3rd January 1844, bearing the seal of Mooftee Nizamoodeen, and registered together with three other papers recited therein, bearing the seals of His Highness the Guikwar, viz. one dated 10th Poush Shood, Sumvut 1859, another in Mahratta, dated 10th Ramzan, and a third in Goozerattee, dated 15th Shavul, Sumvut 1859.

Brijrutunjee, in his answer, pleaded that his decree was of prior date to the bond under which the plaintiffs brought this action, and that it was still in course of enforcement; he also stated that others had obtained decrees against the said Poonjiabhaee Rutunjee, who, to deprive them and him of their just rights, had made a fraudulent deed in the name of his sisters, and nephew, with their connivance; that the husbands of the three female plaintiffs, as well as Bapoobhaee the male plaintiff, were so much in debt, that their property had been sold by public auction; that Bapoobhaee followed no trade, but lived with Poonjiabhaee, who provided him with the necessaries of life, and consequently Bapoobhaee was to be considered in a manner his (Brijrutunjee's) debtor also; and, in fine, that the claim had been got up by collusion, but many mortgages of the nature of the one on which it rested had been annulled by the Courts.

The case was investigated by the Sudder Ameen of

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Surat, who held that the deed passed by Poonjiabhaee to the plaintiffs, of his former debt, was proved, not only by the evidence of witnesses, but also by a list of property furnished by Poonjiabhaee on handing over his property for the benefit of his creditors, and copy of Poonjiabhaee's duftur, filed by the plaintiffs. Brijrutunjee, it was observed, did not object to the correctness of the items in the dufturs, with the exception of two, viz. one of Rs. 3,577-19-0 on account of Homabaee, credited to the names of plaintiffs Sonabaee, Meetheebaee, and Goolbaee, and the other of Rs. 5,000, on account of some jewels, represented to belong to Poonjiabhaee and not Bapoobhaee; but his objections were not established. It was further considered that the kubala under dispute was of a prior date (about 4 years) to Brijrutunjee's attachment, and as the copies of the decrees filed by the plaintiffs (Nos. 103 and 146) went to show that mortgages after the passing of decrees had been confirmed by the Sudder Adawlut, it was argued that the mortgage in this instance ought to be confirmed, any individual being fully at liberty to take the property of a debtor in mortgage, as long as the Judge did not prohibit it on the application of a creditor.

The Sudder Ameen proceeded to observe that Brijrutunjee filed copies of decrees to show that mortgages after decrees had been passed had been annulled, but they were not applicable to this case; and with regard to the argument that at the time the deed was executed his decree was in course of enforcement, it appeared, from the copy of a motion filed, (No. 93,) that the prayer for enforcement was rejected, and a final order to that effect endorsed thereon, unknown to the plaintiffs.

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On these grounds the Sudder Ameen decreed against Brijrutunjee, who thereupon appealed to the Zillah Judge, who delivered judgment as follows :—

"The Court is of opinion that the decree of the Sudder Ameen should be reversed; for it appears that in 1839 this Brijrutunjee applied for execution of his decree by attachment of Poonjiabhaee's property, and that he moved the Court to warn the Desaee, who passed the bond under attachment, not to pay their debt to Poonjiabhaee, but into Court on his account. By the deed under which original plaintiffs claimed the whole of the property belonging to Poonjiabhaee is assigned to them in satisfaction of their alleged claim of Rs. 17,000. Under the circumstances of the case, therefore, viz. the close relationship existing between Poonjiabhaee and original plaintiffs, the terms of the mortgage bond on which this action is brought, whereby property of an immense amount is assigned in satisfaction of a comparatively trifling debt, that no money was advanced in consideration of this mortgage, but that it was merely taken to secure a balance of a running account which is of a somewhat doubtful character, that an execution against the mortgager had been taken out by original defendant, long before the date of this deed, and that the very claims thus assigned were sought to be attached by this Court previously to the date of this deed, the Court can come to one conclusion only, that the mortgage bond is the result of a collusion between relations to defraud *bonâ fide* creditors, and therefore invalid. The Court accordingly reverses the decree of the lower Court, with costs on respondents (plaintiffs) in both Courts."

From this decision a special appeal, at the instance

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of Sonabaee and the other original plaintiffs, was admitted in the Sudder Dewanee Adawlut, to try whether it was consistent with law and practice to set aside an authenticated instrument because it was executed after a Court had sought to attach the property conveyed by such instrument, and ordered an execution against it previous to its date; because the property so conveyed was estimated to be great as compared with the amount secured by the instrument; because it merely secured a running account of a doubtful character; and because the parties to it were nearly allied.

P. W. LeGeyt, Esq.

The certificate to this effect was amended with the consent of the parties, when the case was called on before the single Judge, on his finding that the points stated did not agree with the facts of the case. The amended certificate was as follows:—

"Certified that a special appeal is admitted in this case, in order to try whether it is consistent with law and practice to set aside an authenticated mortgage, because it was executed after a creditor of the mortgager had eighteen months previously unsuccessfully sought to attach the property conveyed by such an instrument; because the property so conveyed was estimated to be great as compared with the amount secured by the instrument; because it merely secured a running account of a doubtful character; and because the parties to it are nearly related."

The single Judge went on to record:—

"The next item in the certificate is, whether it was 'consistent with law and practice to set aside an authenticated instrument because the property so conveyed was estimated to be great as compared with the

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amount secured by the instrument.' Now it appears that the value of these deeds is very questionable: it is asserted, apparently with truth, that the claim against the Raja of Durrumpoor is irrecoverable, he not being subject to the Courts, and has hitherto repudiated the debt, and that the claim against the Desaee was sold by the respondent, (Brijrutunjee,) and it only brought Rs. 7,000, and this is not denied by respondent; there would, therefore, seem no grounds for stating that the property so conveyed was so greatly in excess in value over the amount secured. I therefore find that there is no good ground on that head for setting aside the mortgage bond No. 9. In respect to the 3rd and 4th items in the certificate, viz. that 'the instrument secured a running account of doubtful character,' and 'because the parties are nearly allied,' it is asserted, and not contradicted, that a decree of Court has been since obtained on this instrument, against Poonjiabhaee; but without this, I can certainly see nothing in the terms of the mortgage bond which would entitle any one to pronounce the claim of a doubtful character. On the contrary, sangiros and samaduskhuts are recited, with other particulars, which give the debt every appearance of reality, and it is incumbent on any one impugning an instrument of this description to show that value has not been received, which has not been attempted by respondent. And in regard to the last item, I know of no law or practice which permits transactions between relatives to be impugned without proof of fraud and falsehood, of which none has been offered in this case. This being so, I am not prepared to affirm the decree of the lower Court, and refer the case to a full Court."

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Messrs. A. Bell, John Warden, P. W. LeGeyt.

The case was accordingly taken up by a full Court, when judgment was delivered as follows:—

"The Court is of opinion that if appellants' mortgage bond had been shown to have been founded on a *bonâ fide* transaction between them and Poonjiabhaee, their appeal would have been a good one; but it is remarkable, that if Poonjiabhaee's claim had been resisted, they would not, for all that appears, have had a particle of evidence with which to support the mortgage deed. The Court is further of opinion, that the application of the respondent to attach the title-deeds, under the circumstances which prevented the attachment being carried out, should be held to be the date of the attachment, and, therefore, that the priority of claim to the instruments is in favour of respondent. Respondent is in possession of an order of the Sudder Dewanee Adawlut, dated the 13th October 1840, to receive from Poonjiabhaee the amount awarded by the decree of the Privy Council against Suvaichund, and there is, therefore, no question of his claim against Poonjiabhaee; while the mortgage by that individual of a portion of the property to appellants, subsequently to becoming guarantee for the payment of respondent's claim, and after the passing of the order of the Sudder Dewanee Adawlut for payment, is an act of so questionable a nature as to justify the conclusion arrived at by the lower Court, viz. that the mortgage bond is the result of a collusion between relations to defraud *bonâ fide* creditors. Under this view the appeal is dismissed, with costs."

Dissatisfied, Sonabaee and the other original plaintiffs petitioned for a review of judgment, urging that the decision was erroneous in law, and at variance

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with the certified grounds on which the appeal was admitted, and with the facts proved in the Zillah; and the application having been considered, the Court recorded the following resolution in respect thereto:—

"The Court, on the 23rd December 1850, decided that if appellants' mortgage had been shown to have been founded upon a *bonâ fide* transaction between them and Poonjiabhaee, their appeal would have been a good one; but that if Poonjiabhaee's claim had been resisted, they would not, for all that appears, have had a particle of evidence with which to support the mortgage deed. In this the Court are in error, for they decide upon a question which is not before them for decision. The Court also decide that the application of respondent to attach the title-deeds should be held to be the date of attachment. In this they are in error: respondent never made any application to attach the title-deeds; his application, made prior to Sonabaee's mortgage, is dated the 16th December 1840. But this is not a motion for attachment, nor are the title-deeds mentioned in it: it is merely a request that the Nazir should be directed to ask the parties mentioned what they owe Poonjiabhaee, and to pay respondent what money they admit to be due. Upon these grounds of mere errors, and also with reference to the Court's decision in Sorabjee Wacha Ghandee *vs.* Koovurjee Manekjee, ("Reports of Selected Cases," page 235,) the Court admit a review of judgment."

Messrs. W. E. Frere, A. Remington, M. Larken.

The case was then tried, when the Court were of opinion, and decided, that there was nothing to show that the mortgage to Sonabaee by Poonjiabhaee was not a *bonâ fide* transaction, and therefore no reason

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why it should not be upheld; that respondent Brijrutunjee never made any application to attach the title-deeds, and, consequently, that he had no prioity of claim on account of attachment; that Brijrutunjee having obtained an order from the Sudder Dewanee Adawlut on the 13th October 1840, to receive from Poonjiabhaee the amount awarded by the decree of the Privy Council against Suvaichund, did not prevent his security Poonjiabhaee, as decided in the case of Sorabjee Wacha Ghandee *vs.* Koovurjee Manekjee, from mortgaging property, even though he had passed a security bond for costs; and the order of the Sudder Dewanee Adawlut being dated the 13th October 1840, while the mortgage to appellants was not made till 3rd July 1842, and Brijrutunjee did not attach the property till the 9th October 1846, did not justify the conclusion that the mortgage was the result of collusion between the relations to defraud *bonâ fide* creditors. The decree of the Sudder Dewanee Adawlut dismissing the appeal, and the Zillah Judge's decree, were therefore reversed, the Sudder Ameen's decree being affirmed, with all costs on respondent.

No. 3227, Special.

SHURFOODEEN and HUSSEIN wulud DURVESH.....*Appellants,*

versus

BUCHA BALSHET KHIJMUTROW, deceased, his Son and Heir RAMBHOW .....*Respondent.*

Rupees 232–2–3.

[In a Suit to raise an Attachment from off a part only of attached Property, the Damages may be laid at the value of the portion sought to be released, and not at the full amount of the property attached.]

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This action was brought by Shurfoodeen and Hussein for the removal of an attachment; and the Moonsiff of Bhewndy, in the Konkun Zillah, by whom it was tried, and who entered fully into the merits of it, rejected the claim, as he considered that it had totally failed of proof; whereupon the plaintiffs appealed in the Court of the Assistant Judge, who deemed it unnecessary to enter into the particulars of the case, because, in reference to a yad put in, it appeared that the property in dispute had been attached for the sum of Rs. 500; and it was held that the suit to raise the attachment should have been brought for that sum, instead of Rs. 232-2-3, at which it had been laid; and as this sum was less than three-fourths of the amount at which it should have been laid, the Judge considered there was no alternative under Clause 3rd Section XVI. Regulation XVIII. but to dismiss the appeal, and saddle the appellants with the whole of the costs.

A special appeal was then prayed for in the Sudder

Dewanee Adawlut, on the grounds that the decree of the Assistant Judge was contrary to law, in holding that the action to raise the attachment should have been laid at the amount for which the property had been attached, the claim being only for a share of the property, valued at the sum for which the suit had been instituted; and the sitting Judge concurring in this view, recorded his opinion that the case should be remanded to be decided on its merits, in order to which he admitted the special appeal.

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G. Grant, Esq.

On this point, when the case came on for hearing, the full Court recorded their opinion that the suit, being to raise the attachment from off a part only of the property, attachment damages were properly laid at the amount appellants sought to recover, and need not have been laid at the full amount of the property attached. The Assistant Judge's decree was therefore annulled, and the suit returned for re-trial in appeal, and a new decree to be passed, the costs in the Sudder Dewanee Adawlut being ordered to be apportioned on the ultimate decision of the suit.

Messrs. W. E. Frere, A. Remington, M. Larken.

No. 3275, Special.

APAYA wulud PURBOOAYA .....*Appellant,*

versus

PURBOOAYA deceased, his Son and Heir MAHADEO.....*Respondent.*

Rupees 57–2–0.

[When the probabilities are in favour of there being more Evidence in support of a Claim, the Judge in appeal ought to satisfy himself

whether it exist or not before reversing a Decree awarding such Claim in a Court of Original Jurisdiction.]

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This action was brought by Apaya for the removal of an attachment placed by Mahadeo on a dwelling house, in execution of a decree against one Shétee wulud Kérojee, which house and its site he (Apaya) claimed, as having being sold to him by Shétee on the 11th October 1847. Mahadeo, for the defence, pleaded that Apaya and Shétee were acting in collusion to his detriment.

The suit was heard by the Moonsiff of Marha, who decreed in Apaya's favour, holding that the deed of sale and his enjoyment of the property had been established; but the decision was reversed in appeal in the Court of the Zillah Judge of Sholapore, who recorded his views as follows:—

"On the 11th October 1847, the appellant Mahadeo filed a plaint (Suit No. 863 of 1847) against Shétee, who on that same day purchased the stamped paper, and on which day the deed of sale (No. 7) is drawn up. This document was admitted by Shétee, but then it was his interest to do so. There is no 'kana soomaree' or census of houses produced, to show that the house in question stands in the name of the respondent Apaya, the alleged purchaser, and none of the neighbours are called to prove its occupancy by the respondent Apaya's alleged tenant Sumboo. He, (Sumboo) himself states he stands in such position to the respondent Apaya, and it is stated in the attachment yad that he was in the house at the time; but this the Court does not consider as at all sufficient or satisfactory evidence to prove the fact of occupancy for about four years, as alleged. The decree is accordingly reversed, costs on respondent."

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P. W. LeGeyt, Esq.

A special appeal from this decision was admitted in the Sudder Dewanee Adawlut, to try whether the Zillah Judge did not act contrary to established practice in reversing the Moonsiff's decree, because he thought the evidence of the sale defective, instead of remanding the suit for more evidence to be taken, the special appellant averring his readiness to produce it, and offered to do so in an application for a review; and the case having been called on, it was decided by a full Court, that as the Zillah Judge's decree showed that the probabilities were in favour of Apaya's having more evidence in support of his claim than he produced before the Moonsiff, the Zillah Judge ought to have satisfied himself whether such evidence did exist or not before he reversed the decree Apaya had obtained in the Moonsiff's Court, and therefore, that in reversing the decree absolutely, the Zillah Judge departed from sound practice. The Zillah Judge's decree was therefore annulled, and the appeal returned for re-trial, and a new decree to be passed, the costs in the Sudder Dewanee Adawlut being ordered to be apportioned on the ultimate decision of the case.

Messrs. W. E. Fe[illegible], A. Remington, M. Larken.

No. 2959, Special.

VUNDRAWUN MUNGULJEE .....*Appellant,*

versus

ISABJEE BUGSHA and POONJA BUGSHA...*Respondents.*

Rupees 458–3–0.

[It is necessary in a Suit on an Instalment Bond to sue for the full amount of it, in order to prove it, and this being done, all the instalments

which fall within twelve years prior to the date of plaint are recoverable by Law.]

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Vundrawun instituted this suit in the Court of the Moonsiff of Dundooka, to recover principal and interest due on an instalment bond passed to him and one Runchore Damothur, and subsequently made over wholly to him. The claim was laid against Isabjee and his brother Poonja, who denied that he had executed the instrument.

The Moonsiff held that the bond had been established, and awarded payment of seven instalments; but in appeal instituted by Isabjee alone in the Court of the Joint Judge, the decision was reversed, on the ground that the bond was executed upwards of 14 years previous to the date of filing the suit, and that the action, therefore, could not lie under Section XII. Regulation V. 1827.

A. Spens, Esq.

From this latter decision a special appeal was admitted in the Sudder Dewanee Adawlut, at the instance of Vundrawun, to determine whether in a case in which a bond is more than 12 years old, but some of the instalments payable thereon fall due within twelve years from the date of filing a suit in the matter, such instalments are not legally recoverable.

Messrs. W. E. Frere, A. Remington, M. Larken.

The case then coming on before a full Court, one of the Judges, Mr. W. E. Frere, recorded the following minute on the subject:—

"Isabjee passed an instalment bond to Runchore and Vundrawun for Rs. 288, payable in eight yearly instalments of Rs. 36 each, Runchore's share being Rs. 77, and the balance Vundrawun's, to whom the bond was made over; and he sued Isabjee to recover. Isabjee denied the bond; but the Moonsiff finding it

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proved, awarded the last seven instalments to Vundrawun, the first instalment being without the Statute of Limitations. On appeal, the Joint Judge, finding that the bond was dated in Sumvut 1892, or more than 14 years previous to the date of filing the suit, reversed the Moonsiff's decree, being of opinion that the whole claim was barred by the Statute of Limitations. A special appeal was admitted, to determine whether, in a case in which a bond is more than 12 years old, but some of the instalments payable thereon fall within 12 years from the date of filing a suit, such instalments are not legally recoverable.

"In support of the affirmation of the certificate, four decisions by the Sudder Dewanee Adawlut have been filed, viz. No. 1685, given on the 7th December 1841; No. 2259, on the 21st January 1848; No. 2307, decided on the precedent of the last quoted, on the 20th June following; and No. 2582, decided on the 21st February 1851; both these last cases being reported. I cannot in any of them, however, find the grounds upon which the decision was founded; and as the principle upon which I have always decided cases of suits brought upon bonds was, that the whole bond was the covenant, and whether a person sued to recover the first instalment due, or all the instalments, so soon as the time for payment of the last instalment expired, he was bound to sue upon a stamp which would cover the whole bond; and as I could not understand (the suit being upon a bond) why, in the event of 12 years having elapsed from the date of the bond, but not from the date of the last instalment being due, the whole bond should not be kept alive, as in the case of running accounts, I, with a wish not

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to give a hasty opinion, obtained my brother Judges' consent to adjourn this case.

"I have since well considered the subject, and find that in England 'debt will not lie on a promissory note payable by instalments until the last day of payment be passed'; but upon referring to 'H. Blackstone's Reports' vol. i. page 550, to Lord Loughborough's judgment, in which that rule is confirmed, I find that the inconvenience of this rule, which was that no action would lie at all, put the Judges upon a method of getting rid of the supposed difficulty, by having recourse to the action of *assumpsit*, which is a mere special action for debt. This led to cases in *assumpsit* being brought for money due by instalments, in which plaintiff recovered damages, the whole sum including a payment not due; and the learned Judge concludes with saying:—'I cannot indeed devise a substantial reason why a promise to pay money not performed does not become a debt, and why it should not be recoverable *eo nomine* as a debt; but the authorities are too strong to be resisted.'

"We, indeed, are not bound by the technicalities of actions of debt and actions of *assumpsit*, but the case before us is beset with much the same difficulties, for we are bound in all cases to take care that the provisions of the Stamp Regulation are observed; and though all our forms of action are the same, still different actions require the plaint to be on stamps of different amounts, and we must be careful not to do anything by which the provisions of Regulation XVIII. A. D. 1827 may be set at naught, and the interests of Government be injured. With this view, I would in all cases, particularly where the bond, as in this case,

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is denied, as I did in Bapoorow Sholapoorkur *vs.* Rumabaee Desaeen, which was reversed by the Sudder Dewanee Adawlut, (No. 2393,) require the plaintiff to sue on a stamp which would cover, not only the instalments due, but also all future instalments; since, when the bond is once proved, which it must be on one instalment only being sued for, and awarded, the plaintiff has established his claim to all the rest, and if the first instalment of a lakh of rupees is only 15 annas, the suit would be brought on plain paper, and the plaintiff's right to all further instalments be established, to the great detriment of the revenue, and with manifest injustice to Government. The objection urged to this would be, that like the action of *assumpsit*, the Court would award what was never sued for—a future instalment; but that need not be the case: the suit might be brought for the instalment now due, and that only need be awarded, though the plaintiff, as in this case, when the bond is denied, must prove the bond by which not only this but all his future instalments are secured to him. The present ruling makes each instalment a separate debt, and independent of the bond, because the claim is not for the amount of the bond, but for some smaller sum; the bond, therefore, cannot be said to be an acknowledgment in writing for that sum, unless it also secures all the rest, and a suit for one instalment, independent of the whole bond, becomes a suit for a mere debt, and, consequently, not being supported by an acknowledgment in writing, instalments due for the last 6 years only, and not for the last 12 years, ought by the present ruling to be recoverable.

"I recognize the principle, that a bond can be divided into different parts, and that a part of it may

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be without the Statute of Limitations, and a part within. The whole bond must, in my opinion, stand or fall together; and by adopting the view I take of the law and procedure, the bond would be preserved in its integrity, and a person suing within 12 years after the last instalment was due would be able to recover the full amount of the bond, though, if he sued for the first instalment only, he would, if the bond be denied, be obliged to sue on a stamp which would cover the full amount. If, however, the principle that the date of each separate instalment, and not the date of the last due under the bond, is the period from which the limitation is reckoned, be held to be too strong to be resisted, and every instalment may therefore be sued for separately, we must limit the instalments to 6 years, under Clause 1st, Section III., they being in the nature of an account, and not of a bond, and not extend them to 12 years, under Section IV. Regulation V. A. D. 1827. It might, I know, be objected to allowing instalment bonds to run for 12 years after the last instalment was due, that a man may file a suit a preposterous number of years after the bond was written, and that it would open a wide door to fraud; but every Moonsiff must guard against this, for what would be good proof when the first instalment only was due might be very insufficient evidence to prove a transaction which had taken place 18 years before, 6 years after the last instalment was due, and of which transaction nothing had been heard from the day on which it is said to have taken place until the day on which the suit was filed."

Another Judge, Mr. A. Remington, recorded his opinion thus:—

"I agree in opinion that the suit should be brought

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on the whole bond, and in subsequent actions merely on a stamp sufficient to cover the amount of the instalment. It appears to me also proper that the Court should go out of the record, and declare, when requisite, that the bond should have been engrossed on a stamp of higher value. The interest of the revenue requires this, and it is not to be expected that technical objections of that sort will always be raised.

"I am also of opinion that the long course of decisions on the principle of which engagements are now contracted, namely, that the cause of action runs from the date on which an instalment becomes due, and that the lapse of 12 years from its date is a bar to its recovery, but not affecting the remainder that may be within that period, ought not to be disturbed.

"Such ruling, I would observe, is in accordance with modern decisions: for instance, in Coles *vs.* Harris, it was ruled, that when all the items of a written account are on one side, the circumstance of there being some items of the bill within 6 years will not defeat the Statute as to those that are of longer standing.

"Again, Starkie, when money lent is the consideration for a bill of exchange payable on a future day, or for a promise of repayment at a future day, the latter is the day from which the limitation is to be reckoned. Where a note is payable at a specified time after sight, the Statute does not begin to operate till that time has expired after presentment of the note; when a note is payable at so many months after demand, and not from the date, the Statute runs from the demand, and not from the date; and lastly, when

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the cause of action does not arise until request made, the Statute runs from the time of request.

"Applying the principle contained in the above exposition of the law, and which is in accordance with our Court's decisions, the cause of action on an instalment bond commences from the day such instalment is payable, and is barred in respect to that instalment after the expiration of 12 years."

Mr. M. Larken, the third Judge, recorded :—

"I think the decision on Special Appeal 2393, which is quoted in support of this appeal, was erroneous. I would only allow of the recovery of instalments when the bond shall have been first proved by the action for the instalment being brought upon a stamp which will cover the whole bond."

Messrs. W E. Frere, A. Remington, M. Larken.

The Court then delivered judgment as follows :—

"The Court are of opinion, and decide, that the suit being upon an instalment bond, the appellant, after having proved his bond, can by law recover all the instalments which fall within 12 years prior to the date of his plaint. The Joint Judge's decree is therefore annulled, and the suit returned to the Zillah Judge, for re-trial on its merits, appellant being at liberty to file a supplemental plaint to recover the amount of the whole bond, which is necessary in order that he may prove his bond, and must be done before any instalments can be awarded to him ; and in passing a new decree the Zillah Judge is to apportion the costs in this Court."

No. 3270, Special.

ROODRAGEER GOSAVEE, deceased, his Disciple and Heir VISHWESHWURGEER....*Appellant*,

versus

KAZEE HYUTOOLAKHAN wulud KAZEE MAHOMED TUKEEKA.....*Respondent*.

Rupees 200.

[A Copy of a Copy of a Document having been admitted by a Zillah Judge, as Evidence, without being proved, it was held by the Sudder Dewanee Adawlut that he was not competent to do so.]

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Kazee Hyutoolakhan, in instituting this suit in the Court of the City Moonsiff of Poona, represented that the Kings of Dehli gave 3 chaoors and 90 bigas of land for the maintenance of the office of Kazee in the Purgunna of Poona; that this land was under the management of Mahomed Sufdur, till his decease, when he, (Hyutoolakhan,) on succeeding to the office of Kazee, became entitled to it; that the land was cultivated by Koonbees, who used to make over the proceeds to Mahomed Sufdur; and that 20 acres, 18 goontas, and 6 anas of this land were in the hands of Vishweshwurgeer, who alleged that he held them in mortgage, and would not surrender them; and this action, therefore, was entered, to recover the same.

In his answer, Vishweshwurgeer contended that the land had been mortgaged to Roodrageer for 40 years, thousands of rupees having been advanced on it; that the sunnud which Hyutoolakhan had received from Government had no reference to the land; and if, as he alleged, he had recovered a portion of the 3 chaoors

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and 90 bigas of land said to belong to the office of Kazee from others in a suit at law, this did not affect his (Vishweshwurgeer's) right as mortgagee.

The Moonsiff held that Hyutoolakhan's sunnud conferred on him no right to the land in dispute, whereas three sunnuds which Vishweshwurgeer received from the widow of Mahomed Sufdur showed that it was not assigned to the office of Kazee, but was private inam. It was also considered, that as the land had been a long time in the possession of Vishweshwurgeer, it could not be taken from him without the order of Government; and the mortgage deeds having also been established, the claim was disallowed.

In appealing from this decision, Hyutoolakhan set forth in the Zillah Judge's Court that the land had been assigned by a firman of the Kings of Dehli to the office of Kazee, and could not be mortgaged by an incumbent of that office, under the Regulations.

The case having been heard, the Zillah Judge decided as follows:—

"This case is one of considerable hardship to the respondent. He has held possession of this land for 32 years. The mortgager (Mahomed Sufdur) was Kazee, and held land, measuring 3 chaoors and 90 bigas, in virtue of his office as Kazee, by a firman of the Emperor Aurungzebe, dated 246 years ago. This document has been introduced by appellant in this appeal, and is recorded as No. 10. The mortgager (Mahomed Sufdur) had mortgaged this land to Dhurgadass bin Kaliandass, and from him it came into the hands of the ancestors of respondent. This mortgage has been made without authority, and therefore cannot hold good, as he had only a life interest in the land

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as Kazee. "The appellant is the Kazee of the Poona Purgunna, and, by virtue of his office, is entitled to the land specified in the Emperor's firman. The respondent's documents (Nos. 40 and 41) are both contingent on the Emperor's firman. The decree passed by Balajee Pundit (No. 27) recognises the Emperor's firman, and this has been introduced by appellant. A decree (No. 28) introduced by appellant mentions that Mahomed Sufdur admitted that this land was attached to the office of Kazee of Poona, and he brought the suit against appellant because the latter wished to interfere with his duties as Kazee. On the above grounds the appellant's right and title as Kazee must be held good in regard to the lands assigned to the office of Kazee; and therefore the Moonsiff's decree is reversed, and the land, 20 acres, 18 goontas, and 6 anas, claimed by appellant, must be restored by respondent."

M. Larken, Esq.

A special appeal from this decision was admitted in the Sudder Dewānee Adawlut, to determine whether the office of Kazee, not being hereditary, it was not a departure from law and usage for the Zillah Judge to admit the plaintiff's claim to the inam, which was proved in the lower Court to be the personal inam of the former holder of the Kazeeut.

On this point the full Court recorded:—

Messrs. W. E. Frere, A. Remington, M. Larken.

"The Court find that the Judge has admitted respondent Hyutoolakhan's right to the land, in virtue of his office as Kazee, to be established, contrary to the decision of the lower Court, upon a firman of the Emperor Aurungzebe, dated 246 years ago, filed by respondent Kazee Hyutoolakhan in appeal; but this firman, which is not the original, but a copy of a copy,

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not having been proved, it was not competent for the Judge to admit it as evidence, and on it to allow the respondent's claim to the inam. The Judge's decree is therefore annulled, and the case returned for re-trial, in order that the Judge may have the document above referred to proved, and, taking further evidence, if requisite, from both parties, pass a new decree, awarding costs."

No. 3292, Special.

JUNARDHUN SUDASEW. ..... *Appellant,*

versus

MADAPA bin KHUNDAPA ..... *Respondent.*

Rupees 32–4–0.

[In deciding that the Mortgage of Produce not in existence, separate from the Land producing it, is contrary to the Shasters, it was also held that the decision should not interfere with the rights of persons advancing Seed, according to the custom of the country on the hypothecation of the Crops.]

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Madapa brought this action in the Court of the Moonsiff of Barsee, in the Sholapore Zillah, to cause the removal of an attachment issued against the crops of a fourth share of a field which he stated had been mortgaged to him by the owner Bhugwuntrow. Junardhun, the defendant in the suit, contended that the mortgage deed produced was a forgery, and of posterior date to a decree passed in his favour against the said Bhugwuntrow.

The Moonsiff rejected the claim, on the grounds

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that by the terms of the mortgage deed Madapa was entitled to the crops for only the years 1847 and 1848, those attached being of 1851. Dissatisfied, Madapa appealed in the Court of the Zillah Judge, alleging that until his lien as mortgagee was satisfied, he was entitled to the benefit of the deed on which he founded his claim; and the case having been called on, the decision of the Moonsiff was reversed, for the following reasons:—

"Bhugwunt, who was indebted to Madapa, mortgaged to him one-fourth of the produce of the field aforesaid, until such time as the debt was liquidated —at least such is the Court's reading of the mortgage bond (No. 11). Madapa states that it has not been repaid as yet in full, and Junardhun has not shown that it has been. Madapa sues, it is true, as mortgagee, but he must also be considered as having a proprietary right to perishable property, such as is the grain which he now sues to have relieved from the attachment."

P. W. LeGeyt, Esq.

A special appeal was then admitted in the Sudder Dewanee Adawlut, to try whether the Judge had not decided contrary to the Shasters in upholding a mortgage of produce separate from the land, which produce was not in existence at the date of the transaction; and the case having been heard, judgment was delivered as follows:—

Messrs. W E. Frere, A. Remington, M. Larken.

"The Court find, that from the Shastree's exposition in this case, it appears that the mortgage of produce not in existence, separate from the land, is contrary to the Shasters; the Judge's decree is therefore reversed, and the attachment confirmed, with all costs on respondent. This decree, however, must not

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be held to interfere with the rights of persons advancing seed, according to the custom of the country, on the hypothecation of the crops."

No. 3312, Special.

NEMCHUND NYALCHUND, trading under the name of NEELACHUND NYALCHUND. *Appellant,*

versus

SUMBOO wulud URJOONA RUNGAREE, trading under the name of BHOWANEE wulud SUMBHOO, an Infant ..... *Respondent.*

Rupees 75.

[In suing on a Bond, it is necessary to do so on a Stamp for the full amount specified therein.]

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Némchund brought this action to recover from Sumboo Rs. 75, the value of 10 khuns of a dwelling-house, or the 10 khuns themselves. He represented that Sumboo, having obtained a decree against one Nagapa wulud Yelapa, attached the 10 khuns in execution of the same; that they, however, belonged to him, as the said Nagapa had mortgaged them, along with other property, to his, Némchund's brother; and that the property was sold under the attachment, Sumboo himself being the purchaser; but prior to the sale he had agreed to raise the attachment, on being told by him (Némçhund) of the lien he had on the property.

Sumboo pleaded for the defence that Némchund

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ought to be required to produce a power of attorney from his brother, a resident of the Sattara territory, for suing on his behalf; that the property was sold for Rs. 24, and not Rs. 75, the amount at which the claim was laid; and that it was in the possession of Nagapa when it was attached.

The Sudder Ameen of Sholapore, by whom the case was investigated, rejected the claim, on the grounds that it ought to have been laid at the total amount of the mortgage to Némchund's brother, Rs. 1,000, as provided for in the interpretation on Clause 1st, Section III. Regulation IV. of 1827; but the case being appealed to the Zillah Judge, and that officer remanding it to be decided afresh on its merits, on the ground that this exposition of the law was incorrect, the Sudder Ameen decreed in Némchund's favour, with costs, awarding him either the 10 khuns, or their equivalent money value Rs. 75, his claim, as mortgagee in possession, being considered established.

Sumboo appealed in turn to the Zillah Judge, urging that the mortgage deed was forged, Nagapa and Némchund acting in collusion in the matter; that Némchund did not prefer his claim when the property was attached, or when it was sold; that the mortgage money was never paid; and that the mortgage deed was on a stamp of inadequate value, and was therefore null and void.

The case having been heard, the Zillah Judge delivered judgment as follows:—

"In the mortgage bond (No. 10) on which Némchund sued, it is distinctly set forth that the mortgage is only to be foreclosed on the payment of Rs. 1,200, Rs. 200 of which, it is true, is on account of a balance

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of a running account, and the balance, Rs. 1,000, the amount of the mortgage; but as the foreclosure of the mortgage itself is dependent on the payment of the whole sum of Rs. 1,200, the Court is of opinion that the bond should have been drawn up on a stamped paper of the value of Rs. 4, and not Rs. 2, as is the case. The decree of the Sudder Ameen is accordingly therefore reversed, but the decree is not to debar Némchund, if so minded, from suing again on said bond, after complying with the provisions of Clause 1st, Section XIII. Regulation XVIII. of 1827. Costs on Némchund."

A. Spens, Esq.

A special appeal was next admitted in the Sudder Dewanee Adawlut, to determine whether the Judge did not depart from the law, as laid down in Clause 2nd, Section XII. Regulation XVIII. in requiring a stamp for the full amount of a bond on which special appellant sued for a portion of the property which belonged to him, of the value of Rs. 75, and which had been attached and sold by respondent.

Messrs. W. E. Frere, A. Remington, M. Larken.

On this point the decision of the full Court was, that " the Judge did not depart from law in requiring a stamp for the full amount specified in the bond on which Némchund sued" ; and the special appeal was accordingly dismissed, with costs.

No. 3314, Special.

RUNCHORE KESOOR ..... *Appellant,*

versus

NAGJEE BEEJLA ..... *Respondent.*

Rupees 62-3-5.

[Held, that as although Property may change hands by Sale, or in any other way, a Mortgagee's Lien will remain, it is an erroneous practice for the Mortgagee to sue to raise an attachment, and equally erroneous for him when so suing to have the amount of his lien awarded to him.]

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Runchore obtained a decree against one Lulwa Visram, and in execution issued an attachment against a dwelling-house, Nagjee opposing upon a mortgage of the property to him, which mortgage Runchore contended was a fraudulent transaction between Nagjee and his relation Lulwa.

The Moonsiff of Surat threw out the claim, when the case was appealed to the Assistant Judge, who recorded his opinion that the decision was wrong, observing:—

"It appears that Lulwa, not being able to pay his revenue to Government, got Nagjee to pay it for him, and for the sum so paid mortgaged the building in question. The sole difference is one of the witnesses, who upon cross-examination stated the money was paid at the Thanna the day the bond was passed, while from the Government books it appears on that date only Rs. 28-6-3 were paid, the other Rs. 20 having been paid a few days previously. The Acting Assistant Judge cannot, upon so slight a discrepancy, agree to throw out the claim, the transaction having

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taken place previous to the decree being given against Lulwa. The mortgage bond is proved, in the opinion of the Acting Assistant Judge, but as it is not a deed on which an attachment can be raised, the Acting Assistant Judge orders the attachment to be confirmed, but from the proceeds of the sale of the property the sum of Rs. 48-6-3, with interest up to this day's date, is to be paid to appellant, Nagjee Beejla, and all costs are to be borne by Runchore Kesoor."

A. Spens, Esq.

A special appeal was next admitted in the Sudder DewaneeAdawlut, to determine whether the Assistant Judge did not depart from the practice of the Courts, the action having been to raise an attachment, and the decree that the attachment was to remain, but that from the proceeds of the sale of the property a certain sum with interest was to be paid.

Messrs. W. E. Frere, A. Remington, M. Larken.

The decision of a full Court on this point was recorded as follows :—

"The Court being of opinion, that as although property may change hands by sale or in any other way, still the mortgagee's lien will remain, decide that it is an erroneous practice for the mortgagee to sue to raise an attachment, and equally erroneous for him, when so suing, to have the amount of his lien awarded to him. The Assistant Judge's decree, therefore, so far as it awards Nagjee the amount of his claim against the property, is amended, respondent bearing all costs."

No. 2992, Special.

WASOODEO NARAIN JOSHEE.....*Appellant,*

versus

BIKAJEE BAPOOJEE.....*Respondent.*

Rupees 185.

[A Petition incidentally admitting a Debt held to be available as a written admission, such as is contemplated in Regulation V. of 1827.]

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Wasoodeo, in bringing this action in the Court of the Moonsiff of Chiploon, in the Konkun Zillah, represented that Bikajee's father had mortgaged a tikan or field to him; that the mortgager, with his consent, retained the management of it; and that Bikajee, on the demise of the mortgager, his father, refused to give it up. He also represented that in 1835 a reference was made to a Punchayut by the said mortgager, and his two brothers, to decide certain matters relating to a division of a property, on which occasion the mortgager admitted that the sum of Rs. 100 was due to him (Wasoodeo) on account of the mortgage; and that the award of the Punchayut provided for its payment, and therefore the suit was not barred by the Regulation of Limitations.

Bikajee did not appear to defend the suit, which, however, the Moonsiff decided in his favour, on the grounds that Wasoodeo had only produced one witness to establish the validity of his mortgage deed, the other witnesses being stated to be dead; that he had failed to prove that he had ever held possession of the property; and that although he produced an extract from a punchayutnama, yet it did not appear that

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that punchayutnama had ever been presented and filed in a Zillah Court.

This decision the Senior Assistant Judge at the detached station of Rutnagherry confirmed in appeal, recording:—

"Appellant in his appeal petition urges that respondent's father admitted before the Punchayut that he owed him the sum of Rs. 100 on account of the mortgage, and that the extract of the award (Exhibit No. 26) proves that fact; that his mortgage bond is of 34 years' standing, and that is the reason he can only produce one witness to the bond. Now, with regard to the first objection, the Court finds that there is mention made in the Punchayut award of a sum of Rs. 100 being due to appellant on account of a mortgage, and the award bears date the 5th of April 1835; but this award cannot be held to bring the suit within the period prescribed by Clause 2nd, Section III. Regulation V. of 1827, as appellant was not one of the parties who referred the matter therein set forth for the decision of a Punchayut, and therefore that transaction can hardly be said to be the last between appellant and respondent's father. With regard to the second objection, the Court finds that the mortgage bond dated the 3rd July 1814 is drawn up in the usual manner, vesting possession in the mortgagee, and yet there is no evidence to prove when he had possession, or when he was ejected; and as it does not appear at all probable that appellant would have allowed matters to rest, as they have all this time, without disturbing respondent's possession, had his bond not been liquidated, the Court considers that it would be inconsistent with the Regulations on such

inconclusive grounds to disturb respondent's possession, and therefore confirms the decree of the lower Court."

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G. Grant, Esq.

A special appeal was next admitted in the Sudder Dewanee Adawlut, to determine whether the construction put by the Senior Assistant Judge on Section VII. Regulation V. of 1827, viz. that an admission of debt is not good if made in a case to which the person in whose favour the admission is, was not a party, was not wrong; and further, whether the Senior Assistant Judge did not act contrary to law and practice, in declining to admit, without stating his reasons, an acknowledgment which appellant moved the Court to receive.

On these points the full Court recorded:—

Messrs. W. E. Frere, A. Remington, M. Larken.

"The Court find that the award by the Punchayut in 1835 was not an admission in writing by Bapoo of this debt, but that Bapoo did, on the 7th April 1835, petition the Mahalkuree to give effect to this award of the Punchayut, and that petition was an admission of the award, and, through that, of the claim in question; and that the Senior Assistant Judge ought not to have deprived Wasoodeo of the benefit to be derived from this admission, because it was not to him personally, as the law does not so restrict the admission. The Assistant Judge's decree is therefore reversed, and the suit returned, in order that it might be tried on its merits, respondent being liable for all costs which have been incurred up to this day."

No. 3334, Special.

OOMEDCHUND wulud SUKARAM ..... *Appellant,*

versus

GUNGATHUR NURSEW KOOLKURNEE..... *Respondent.*

Rupees 62.

[Separation in a Hindoo Family, and division of Interests, can only be legally proved by a Pharkuteeputr, or Deed of Separation.]

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Oomedchund, in execution of a decree he had obtained against one Naro Nursing, issued an attachment against a dwelling-house, and certain other property, and thereby gave occasion to the present action, which was entered by Gungathur to raise the attachment, it being stated in his plaint that he and his brother Naro Nursing had separated, and that the property attached formed part of his share of the family estate. Oomedchund, however, contended that the brothers had not separated; that the pharkuteeputr, if a genuine instrument, would have been on stamped paper, and attested by four relatives; and that he had originally sued both brothers; but the claim against Gungathur was disallowed by the Court, on the score of their living united.

The case was investigated by the Moonsiff of Marha, in the Sholapore Zillah, and the decision passed was in Gungathur's favour, on the grounds that the fact of separation, the division of property, and his right to the property in dispute, had been fully established. His claim was also recognised in appeal in the Court of the Zillah Judge, who recorded :—

"The Court affirms the decree of the lower Court,

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on the grounds that Naro Nursing, having admitted the division of the property between himself and Gungathur, does away with the objection raised by Oomedchund's Vakeel, that the pharkuteeputr itself is not on stamped paper; and although it is doubtful whether or not any interpolations have been made in the house census papers, as alleged, still it is merely a doubt, and therefore must not be allowed to influence the Court's decision; and finally, because there is no proof that Naro and Gungathur are not separate families."

Oomedchund then prayed the admission of a special appeal in the Sudder Dewanee Adawlut, which was granted, to determine—1*st*, whether the unstamped deed of separation of 1843 should have been held to avail against the bond passed by the elder brother in 1842; and 2*nd*, whether, under the interpretation of the 15th July 1828 on Section X. Regulation XVIII. of 1827, (Harrison's Code, page 762,) the Zillah Judge did not further depart from law and practice in admitting in evidence this unstamped deed of separation.

M. Larken, Esq.

On these points the full Court decreed as follows:—

Messrs. W. E. Frere, A. Remington, M. Larken.

"The Court are of opinion, that though the Judge did not admit the release filed in this case to be evidence, because it was on unstamped paper, he still was wrong in allowing other proof of a fact which could only be legally proved by the release itself; and that he ought not to have allowed Naro's admission any weight, as he was not a party to the suit, but an interested witness. The Judge's decree is therefore reversed, and the Moonsiff, having decreed that the attachment be raised, in consequence of the division of the family being proved by the release, it is decided that the attachment be confirmed, with all costs on respondent."

No. 2997, Special.

MAHADOO wulud JOOGLEJEE PATEL.... *Appellant,*

versus

BUHIROO wulud TIMAJEE, deceased, his Wife SHABAEE and Nephews JOOBA, SUTWA, and NIMBA wulud BHAWAN, his Heirs..... *Respondents.*

Rupees 11–1–3.

[Held that a Certificate of Heirship under Act XX. of 1841 is granted only to facilitate the collection of debts, and for the security of parties paying debts, and that it is not requisite to enable a party to sue for proprietary right in real property.]

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Buhiroo originally instituted this suit in the Court of the Moonsiff of Pimpulgaum Buswunt, in the Ahmednuggur Zillah, to recover possession of a field which he represented to be his hereditary property, and entered in his name in the Government books, but which Mahadoo cultivated, and refused to give up. Mahadoo contended for the defence, that the the field had been in his family for 40 or 50 years, and had never been cultivated by the family of Buhiroo.

The Moonsiff was of opinion that it had been shown that the field was in the name of Buhiroo in the Government books; that he had been in possession, and that his heirs had repaired its embankments, and let it to Mahadoo for cultivation; and he therefore awarded possession of it to them as claimed; and his decision was affirmed in appeal in the Court of the Principal Sudder Ameen, who recorded his full concurrence therein.

A special appeal in the matter was next admitted in the Sudder Dewanee Adawlut at the instance of Mahadoo, to determine whether the lower Courts had not departed from law and practice in giving judgment for a party suing as heir without the production of the certificate described in Act XX. of 1841; and the point having been tried, it was held by a full Court that a certificate of heirship under Act XX. of 1841 is granted only to facilitate the collection of debts, and for the security of parties paying debts; and that it is not requisite to enable a party to sue for proprietary right in real property. The appeal was therefore dismissed, with all costs on appellant.

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M. Larken, Esq.

Messrs. W. E. Frere, A. Remington, M. Larken.

No. 3005, Special.

MULKOJEE wulud RAJEE PATEL..... *Appellant,*

versus

BALOJEE wulud BHOOJUNGA .....*Respondent.*

Rupees 101–4–0.

[Held that an Action will lie for the apportionment of the proceeds of the Official Remuneration of a Patel, the Collector's authority over the proceeds of the Wutun not being affected by the decision that may be passed. Held, also, that there is no Law requiring a Claim to a Share in a Patelkee Wutun to be supported by documentary proof, proof to the satisfaction of his mind being all that law and practice require the Judge to take.]

This was a suit instituted by Balojee, to establish his right to a half share of a Patelkee wutun, to which Mulkojee contended he had no claim. It was

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decided in favour of the former by the Moonsiff of Marha, on the grounds that it was established that he was in possession soon after the British accession to the country; and that although his enjoyment was disturbed, still Mulkojee was unable to prove that he ever held the whole wutun as his unquestioned right, Balojee never having abandoned his claim. It was also established that both parties before the action had agreed to abide by the decision of a Punchayut, which was given in favour of Balojee.

Mulkojee then appealed in the Court of the Zillah Judge, in which the decision of the Moonsiff was affirmed, for the reasons recorded as follows:—

"Mulkojee had at first denied Balojee's relationship, but he now admits his right to the share he enjoys of the miras land in the family. It seems he refuses to give up to Balojee the half of the compensation for googree,* or the due of grain: the right of manpan† is not disputed to be with Mulkojee; the suit is for half the annual proceeds of the former. The decision of the Punch, although it does not carry the weight due to a deed of arbitration regularly passed, is yet deserving of consideration in such a case. This it has rightly had. I do not on the whole see grounds to alter the decree of the Court below, which is affirmed, with costs."

M. Larken, Esq.

A special appeal was next admitted in the Sudder

* "Googree," grain which used to be presented in some districts to the Patel, and in others to Government, after the ripening of the crops; the cess in money levied in lieu; also a fee to certain Hukdars in kind.

† "Manpan," honorary right, privileges, perquisites, &c. attached to an office; the forms of that kind of respect indicated by precedence on particular occasions.

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Dewanee Adawlut, to determine, 1*st*, whether the lower Courts did not depart from law in entertaining this suit, which was for half the annual proceeds of the official remuneration of a Patel (see Section XIII. Act XI. of 1843); and 2*nd*, whether the lower Courts did not depart from law and practice in admitting respondent's claim to one-half of the Patelkee wutun, when it was unsupported by any documentary proof of enjoyment within thirty years.

Messrs. W. E. Frere, A. Remington, M. Larken.

As regarded the first of these points, the full Court decided "that under the precedent (Special Appeal 2737*) an action can under Section XIII. Act XI. of

* No. 2737 Special.

BUSWUNTROW NADGOWDA ..... *Appellant,*

versus

NINGOWA GONDTHEE, Widow of SANTVERAPA..... *Respondent.*

Rupees 420.

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In this case Ningowa sued in *formâ pauperis,* representing that Buswuntrow, the holder of the Nadgowdee wutun of Nurendra was her husband's relation; that the family lived united up to the time of her husband's death, which happened fourteen years before the date of action; and that her son Déshapa, a lad of fifteen or sixteen years of age, was entitled to a fourth share of the wutun, and other family property; but instead of conceding it, the defendant, when her husband died, turned her out of doors, and reduced her to the necessity of maintaining herself by borrowing; and she therefore entered this action at Rs. 1,103-6-0, to establish her son's right.

For the defence, Buswuntrow pleaded that he knew nothing of the plaintiff, neither she nor her husband, whom she represented to have been Santverapa, having ever lived in the family, and her story, therefore, that she had been turned out of doors, was false; and that it was unusual in his family to partition the family property, which was then in his management as head of the family, and on which he paid the Government "Joodee." He also urged that the plaintiff had no right whatever to sue in the matter, and that the claim was laid at an incorrect estimation.

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1843 to be brought for half the annual proceeds of the official remuneration of the Patel, the Collector's authority over the proceeds of the wutun not being

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The Court of first instance having tried the case, rejected the claim, on the ground that Ningowa had failed to show that she was related to the family of the Nadgowda; but on the matter being appealed to the Zillah Judge, the suit was remanded to the lower Court, in order to its being ascertained whether it had not been shown in a previous investigation, conducted by the District Mahalkuree, that the plaintiff was the widow of Santverapa, and if so, what were her and her son's rights under the relationship, and also whether any former decision was forthcoming, from which it could be seen whether it was the custom of the family to divide the wutun.

On the second inquiry, the Moonsiff elicited that it was unusual to divide the wutun, and that when disputes arose between the parties on two former occasions, they were amicably adjusted, by the grant of maintenance to the plaintiff: but this was not considered a fact of sufficient weight to warrant a declaration that she was a member of the family, and entitled to a share; and as the Moonsiff held that this right should not be too lightly conceded, he adhered to his former decision.

The case then went again before the Zillah Judge, when he took occasion to notice, that the only points the Moonsiff had determined on the re-trial were that certain Zemindars had decided a dispute between the plaintiff and the defendant's father Dewapa, in which Santverapa, the deceased husband of the plaintiff, was incidentally mentioned, and that a division of the property was unusual; and that it remained, therefore, for him (the Judge) to decide the other points which had been referred, and which he did as follows:—

"Santverapa was the grandson, and Buswuntrow the great-grandson of Yadapa, who left six sons, two of whom died without heirs, and the other four have representatives alive. Santverapa left the country—at least went to Kurkole, in the Toorgool territory, and his germans state they know no more of him. Ningowa has produced a witness to prove that she is his wife, and Buswuntrow, when the inquiry into Ningowa's poverty was brought on, applied for time to settle with her, but never returned to state the result, so that he then never denied her title to be Santverapa's wife. This tacit admission, together with her witnesses' direct evidence to

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affected by any decision that may be passed in such suit." And as regarded the second point, the Court recorded that they knew of no law "which requires a

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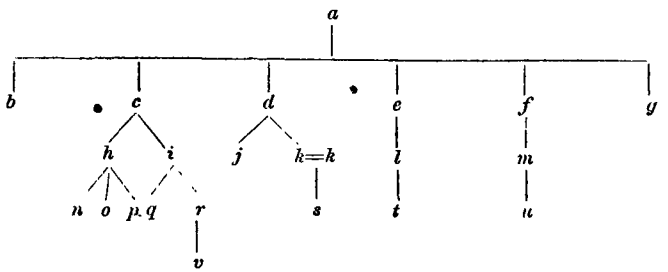
rebut it, establish her title as widow of Santverapa, and consequently her son's claim, Buswuntrow pleading only ignorance of who they are. The pedigree* filed shows that Santverapa's descendant is the only surviving representative of Déshapa, Yadapa's third son, and consequently they have the same interest in the property that Déshapa would have, which, as three only of his brothers have left heirs,

* *Pedigree of the Family of the Nadgowda of Nundra.*



References.

a Yadapa.
b Shewlingapa,
c Chunbusupa,
d Deshapa,
e Busapa,
f Goorshidapa,
g Girjapa,
} Sons of Yadapa.

h Duvapa,
i Fukirapa,
} Sons of second son of Yadapa.

j Yadapa, son of third son of Yadapa.

k = *k* Santverapa, second son of third son of Yadapa, and his wife Ningowa the plaintiff.

l Ningapa, son of fourth son of Yadapa.

m Ningapa, son of fifth son of Yadapa.

n Buswuntrow,
o Ningapa,
p Tinnapa,
} Sons of Dinvapa, grandson of Yadapa.

q Shewlingapa,
r Balapa.
} Sons of Fukirapa, grandson of Yadapa.

s Déshapa, son of plaintiff, and Santverapa.

t Chunbushapa, son of grandson of Yadapa.

u Goorshidapa, son of grandson of Yadapa.

v Keshapa, son of grandson of Yadapa.

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claim to share in the Patelkee wutun to be supported by documentary proof, proof to the satisfaction of his mind being all that law or practice requires the Judge to take." The appeal was therefore dismissed, with costs on appellant.

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amounts to one-fourth. The Zemindars' decision shows that it is not customary to divide the wutun; the equivalent in money must therefore be awarded, so long as this custom continues. The claim also includes a claim for a share of the property, both moveable and immoveable; but to this the Court is of opinion the plaintiffs have not established their right. Santverapa, by the Zemindars' decision, is shown to have lived apart from his family, and held a field, a part of the wutun, for his maintenance; and it is, therefore, on the failure of proof to the contrary, to be inferred, that when he left the family he took his own moveable property with him, and made arrangements for the rest. The claim to this must therefore be thrown out. The net income of the wutun is shown to be Rs. 140 per annum; one-fourth of this is Rs. 35, and to that the plaintiffs are entitled; and taking that at 10 times the amount, the Court reverses the Moonsiff's decree, and awards the plaintiffs a fourth share of the wutun, or, so long as it is not divided, Rs. 75 per annum as their share of the wutun, equal to Rs. 350 of the original claim, and Rs. 70 for arrears for two years, since which time plaintiff has been presenting her claims before the Revenue authorities and the Court, thereby making the whole sum awarded equal to Rs. 420, and costs in proportion."

P. W. LeGeyt, Esq.

A special appeal from this decision was admitted in the Sudder Dewanee Adawlut, to try whether it is competent for a Court to apportion a wutun of a Patel to any individual member of the family, the apportionment of a wutun appearing, by Section XIII. of Act XI. of 1843, to be placed at the discretion of a Collector or controlling officer under that Act. On this point, it was held by a full Court that "it is competent to the Zillah Judge to apportion the Patelkee wutun in this case, the real question between the parties not being the amount of money to which the plaintiff was entitled, but whether the plaintiff was a co-sharer, and if so, the proportion she had in the wutun, which proportion would be liable to vary under the operation of Section XIII. Act XI. of 1843"; and under this view the appeal was dismissed, with costs.

Messrs. John Warden, G. Grant, M. Larken.

No. 3009, Special.

RAMA LUXMON NARAYEN and BALARAM, Sons and Heirs of KALOORAM bin SEETARAM, deceased, represented by their Guardian NUNDRAM bin SOONDERJEE NAIK GOUNDAY. ..... *Appellants,*

versus

CHUGUNLAL bin TOOLJARAM. ..... *Respondent.*

Rupees 8,765–11–0.

[A Zillah Judge having disposed of an Appeal *ex parte* because only a Minor appeared to defend it, it was held by the Sudder Dewanee Adawlut that he should have adjourned it, and proceeded under Section IX. Regulation VIII. A. D. 1827, and as soon as the lad's disqualification was removed by appointment of an Administrator or otherwise, he should have decided it.]

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Chugunlal instituted this suit in the Court of the City Sudder Ameen of Poona, to recover on an agreement, laying his claim against Kalooram bin Seetaram, who did not appear to dispute it.

The Sudder Ameen found that the claim was proved, and awarded payment, whereupon Kalooram bin Seetaram appealed in the Court of the Zillah Judge, representing that having been in great distress of mind on account of the death of a son, he did not appear at the time of trial; and that some jewels had been deposited with Bapoo Magusham Likhity, to whom the agreement had been passed on account of the transaction, as would be shown by a bukshish-putru referred to in that document. Before the appeal was called on, however, Kalooram died, and

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the Zillah Judge issued a proclamation agreeably to Section XLVI. Regulation IV. of 1827, when, as the Judge recorded—"A boy, apparently about 14 years of age, made his appearance before the Court, and was informed that his guardian must appear to prosecute the case. No guardian having appeared, and Chugunlal bin Tooljaram the respondent being present, the Court can assign no reason for not proceeding with the case."

It was accordingly proceeded with, and judgment was passed as follows:—

"In this case Kalooram bin Seetaram passed a kurarnama for Rs. 7,957-11-0 to Bapoo Magusham Likhity, and Bapoo sold it to Chugunlal bin Tooljaram for Rs. 7,000. The kurarnama and sale are proved. The objections entered are invalid: in the first place, his (Seetaram's) grief for his son is not sufficient, considering that the case was not disposed of two and a half months afterwards; in the second place, there is no mention in the agreement of jewels or any property of the kind; and lastly, the bukshish chitee has no reference to the agreement on which the case rests. With this view, the Court sees no cause for interference with the lower Court's decree, which is accordingly affirmed, costs on appellant."

G. Grant, Esq.

A special appeal was next admitted, at the instance of the guardian of the heirs of Kalooram, in the Sudder Dewanee Adawlut, on the ground that the suit was improperly decided *ex parte*, for the heir having appeared, and being considered by the Judge too young to manage his own affairs, the provisions of Section IX. Regulation VIII. of 1827, and those of

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Messrs. W. E. Frere, A. Remington, M. Larken.

Section XLVI. Regulation IV. of 1827 should have been applied.

The decision of the full Court on this point was recorded as follows:—

"The Court are of opinion, and decide, that the heir having appeared in Court, and the Judge being of opinion that he was too young to manage his own affairs, ought not to have decided the appeal *ex parte*, but, having adjourned the appeal, proceeded under Section IX. Regulation VIII. A. D. 1827, and as soon as the lad's disqualification was removed by the appointment of an administrator or otherwise, have decided the appeal. A guardian having now been appointed, the Judge's decree is annulled, and the appeal remanded to the Zillah Court, in order that it might be heard and decided in the presence of both parties, and a new decree passed, awarding costs, those in this Court being apportioned on the ultimate decision of the suit."

No. 3010, Special.

SUMBHAJEE BHASKUR, deceased, his Son and Heir KESHOW, also deceased, his Sons aud Heirs SEETARAM, NARAYUN, LUXIMON and BALKRISHN, Minors, by their Guardian VISHNOO HURRY.....*Appellants,*

versus

JUGJEEWUNROW bin BAJEEROW, and GUNPUTROW bin ESHWUNTROW .....*Respondents.*

Rupees 190–15–9.

[Held that it is contrary to Law to decide on the rights of a person who is not a party before the Court.]

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Jugjeewunrow and Gunputrow brought this action in the Court of the Moonsiff of Chiploon, to recover possession of their village from mortgage on payment of Rs. 517-4-0, laying their claim against Sumbhajee and fourteen others.

It was represented by the plaintiffs that the village of Ulora was their hereditary property; that their grandfather took up a loan of Rs. 400 from the grandfather of Sumbhajee, and mortgaged the property to him, the conditions being that the profits should be appropriated by the mortgagee in lieu of interest; that afterwards the father of Jugjeewunrow and his brother Govindrow received a further sum of Rs. 117-4-0 on the property, making the total debt Rs. 517-4-0, which amount they had tendered to the defendants, who refused it; that their uncle Govindrow having left no issue, they were his heirs, and as such claimed to redeem the village on payment of

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Rs. 571, the exact amount of the debt, after allowing for the difference of exchange.

Sumbhajee, for the defence, contended that the village was first mortgaged to one Dewadur, who transferred his interest in half of it, with the consent of Govindrow, the uncle of the plaintiffs, to one Purshuram Ramchunder, by whom it was transferred to him (Sumbhajee); that there was at the date of action a debt of Rs. 3,059 due on this half village, which must be paid before the plaintiffs could claim restoration. The other defendants set forth similar claims against the property, making the total amount of the debt Rs. 14,118-8-0, inclusive of interest.

The Moonsiff decided that the plaintiffs were entitled to the release of the village, on payment of the sum at which he fixed the amount of the debt due on the mortgage. His decision, however, was amended in appeal in the Court of the Senior Assistant Judge at the detached Station of Rutnagherry, the amount for clearing off the lien of Sumbhajee, who was not a party in the appeal, being reduced from Rs. 1,236-10-0, at which the Moonsiff had fixed it, to Rs. 586.

Sumbhajee himself being dead when the Senior Assistant Judge passed this decree, his heirs petitioned the Sudder Dewanee Adawlut, and were informed that they might present an application for special appeal, which they accordingly did, when the sitting Judge recorded the following observations on the subject:—

P. W. LeGeyt, Esq.

"The novelty in this case is a party seeking to obtain a special appeal against a decree, not having been either appellant or respondent in the suit decided by that decree, although he was a defendant in the original suit, from the decree on which this was an

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appeal. The irregularity and illegality of the Assistant Judge's proceedings in deciding on the right of a person not then a party in the suit are clear, and it would be very hard on the petitioner to refuse to interfere, and leave him without remedy. It is assumed that the Court, who desired him on the 30th July to file a special appeal, considered all this; and I am of opinion that it is an equitable course, for although it may affect the original plaintiff's rights, yet, as he made no appeal against the original award, which decided he should pay Rs. 1,250 to petitioner, it may be supposed he saw nothing to complain of in that award. A special appeal is therefore certified, to try whether the Senior Assistant Judge did not act contrary to law in appeal 226 of A. D. 1849, in deciding on the rights of a person who was not a party to that appeal."

Messrs. W. E. Frere, A. Remington, M. Larken.

On this point, when the case came on for trial, the full Court decided that the Senior Assistant Judge did act contrary to law, in deciding on the rights of a person who was not a party in the appeal; but as the appellants before the Senior Assistant Judge were not parties in the special appeal, the Court could not give petitioner any redress by an award in the case. "Sumbhajee," it was observed, "not being a party to the appeal before the Senior Assistant Judge, cannot be affected by the decree passed by that authority; and, therefore, if the plaintiffs obtain execution of that decree against him, his redress must be brought by appeal from that order." The special appeal was therefore dismissed, and the costs in the lower Court were ordered to be borne as awarded by the Senior Assistant Judge, and those in the Sudder Dewanee Adawlut by the appellant.

No. 2612, Special.

KESOWLAL ROOPCHUND, on behalf of GOSAEEJEE MAHARAJ, deceased, his Widow, and Heir VRIJKOOVEROWJEE .....*Appellant*,

versus

KESRISING HEERACHUND.....*Respondent.*

Rupees 1,000.

[Held that a Zillah Judge did not decide consistently with the practice of the Courts when he declared that the Plaintiff in a suit could not cite as Evidence of Title, or to supply the want of evidence, the admission of the Defendant before the Police.]

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3rd October.

Kesowlal, on the part of his principal, brought this action to recover possession of some land appropriated by Kesrising, and the value of a house standing on it, which he had pulled down.

The suit was filed in the Court of the City Moonsiff of Ahmedabad, but on the score of his being likely to be a partizan, the Principal Sudder Ameen was associated with him, and they jointly decided, that from the title-deeds produced it was clearly established that Gosaeejee Maharaj was the owner of the land, &c. but that it was not proved that Kesrising had pulled down any building; and it was therefore decreed that the latter should pay the former Rs. 700, the estimated value of the land.

The case then went before the Zillah Judge, to whom both parties appealed, and his judgment in the matter was delivered as follows:—

"Having read the appeals, decrees, and other papers, it appears that the original suit has not been filed

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according to Regulation, as on the part of the Gosaeejee Maharaj, Kesowlal, his agent's name, has been recorded, and according to Regulation III. Section III. of 1827, Kesowlal is unable to file a suit in his own name. In the decree passed by the Principal Sudder Ameen and City Moonsiff it is written that this plaintiff 'on the part of the Maharaj' filed a suit against Girjashunkur, which was heard by the Principal Sudder Ameen, and appealed on to the Sudder Dewanee Adawlut; and it is the custom of the country that an agent on the part of 'such a Maharaj' has the whole management of his concerns. This appears to have been mentioned to show that the above referred to Regulation does not refer to the present case: this does not appear right to the Court, it being necessary that every person living within this Zillah, filing a suit, should file the suit under his own name; and not doing thus does not appear to be according to the spirit of the Regulations. That which is written about the suit of Girjashunkur does not appear to have reference to this suit, the defendant never having objected. Again, having examined Appeal No. 206 of 1832, it appears that at first the Gosaeejee Maharaj gave an uktiarnama to Kesowlal to carry on the suit: it appears therefore to this Court that the Principal Sudder Ameen and City Moonsiff have not acted according to Regulation. Again, appellant's Vakeel in Appeal No. 257 says that his client has filed other suits besides this one against Girjashunkur in the same way that the present suit was filed, which suits have been settled by this Court: this argument does not appear valid, as, should it have been the custom formerly, as pointed out by the Vakeel, it does not appear that this suit could be heard, as unless the

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defendant pointed out this mistake it did not belong to the Court to investigate the matter, and on such precedents it does not appear that the Regulation should be put aside: this argument, therefore, does not hold good. Another argument of this Vakeel's is that Kesowlal bought the buildings concerning which the original suit was filed, as agent on the part of Gosaeejee Maharaj; and his name is thus mentioned in the bonds, and therefore this Kesowlal is authorised to file this suit in his own name on account of the Gosaeejee Maharaj. Neither does this argument appear to hold good, as the Court, having examined the selling bonds in the original suit, it appears that the buyer of the buildings is Gosaeejee Maharaj Vurujbookunjee Rugnathjee, and that Kesowlal, Vakeel on the part of the Maharaj, was present; it therefore cannot be allowed that Kesowlal was the buyer, and therefore this argument will not hold good. Again, the Vakeel of appellant in Appeal No. 257 has put in a dhurkast, together with an uktiarnama, to the effect that the Gosaeejee Maharaj deputes Kesowlal as his agent in all and for every business. This uktiarnama does not appear to be a valid document according to Regulation, as from the Regulation an uktiarnama to this effect is only for persons living out of the Zillah, and the Gosaeejee Maharaj is an inhabitant of this Zillah. Again, this uktiarnama has been presented at too late a period, at the time that the original suit was being settled, and therefore the dhurkast, with an order of the Court, without being recorded in this suit, has been returned to the Vakeel of appellant in Appeal No. 257. For the above reasons, it appears right to the Court that appellant in Appeal No. 257 (original

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plaintiff) should be nonsuited, and therefore that the decree of the lower Court, concerning which Appeal No. 248 was filed, should be reversed, and a decree passed this day that original plaintiff (appellant in No. 257) is nonsuited, and costs of both Courts to be borne by appellant in Appeal No. 257. By this decree Appeal No. 257 is thrown out, costs to be borne by appellant; and should the Gosaeejee Maharaj Vurujbookunjee Rugnathjee file a suit in his own name, this decree is not intended to interfere with it."

A special appeal from this decision was admitted in the Sudder Dewanee Adawlut, on the point of the Zillah Judge having disallowed the right of the agent to sue in his own name on the general power of attorney from his principal; and the case going before the single Judge, and he referring it to a full Court, it was decided, that owing to the migratory life the Gosaeejee Maharaj was obliged to lead, his duties requiring him to move from place to place, he ought not to be held to be a resident in any particular jurisdiction, for the purposes of Clause 2nd, Section III. Regulation III. of 1827, even when he happened to be residing within it, and under this view the decree of the Zillah Judge was reversed, and the case was remanded by interlocutory decree to be tried on its merits.

The then Zillah Judge, Mr. A. Remington, accordingly took it up, and decided as follows:—

"The action was brought to recover some land on which stood a shop and a room attached, which original defendant was accused of having appropriated, and removed the materials. Defendant denied this, and further claimed the upper part of the shop as his, and contended that the room belonged to a third

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party, and was not the property of plaintiff. No deeds were produced on either side, but original plaintiff attempted to support his title by the exhibition of certain Kazeekhuts, bearing date 1254 of the Hijree. In point of fact, it was alleged that the real date of their execution was seven years earlier, or 1247, and the Kazee from whose office they were produced deposed as a witness to the truth of the fact, and some papers called drafts were filed, bearing the older date. To prove the purchase of the premises by original plaintiff two witnesses were called, one (Hurgovind) who swore that the shop belonged to his ancestors, and was sold some years back to plaintiff: he admitted there were no title-deeds to produce. Another witness (Pranjevund) deposed to the sale of the odee to the Maharaj plaintiff, as he learnt from his brother Moteeram, he himself being a resident of Surat, and knowing personally nothing of the matter. This witness could speak to no title-deeds either, but stated generally the property was ancestral. To rebut their evidence, original defendant filed a decree of the Sudder Dewanee Adawlut, in which a plaintiff was nonsuited on failing to show that the person who sold him the land had any title to it. The lower Court thought it inapplicable to the facts of this case, as here the Kazeekhuts were produced, and the owner of the land deposed to their title and the transfer of it by sale to plaintiff, and overruled the objection. This Court, however, takes quite a different view of the matter. There can be no manner of question that the Kazeekhuts are spurious; the reason that they were drawn out in 1254, while the draft was prepared in 1247, is said to be that some person interposed an objection to the sale of the property: that individual, however, is

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not named, nor even produced, and the pretext, however plausible, is most suspicious. Again, the khuts were not signed or attested by people of the Mehla, but non-residents: the explanation given of that occurrence is that the neighbours refused to aid the attestation, a plea which, if not a mere excuse, shows at once the nature of the transaction was considered questionable by the most competent to form an opinion. The witnesses in respect to the attestation are contradictory, while the alleged owners of the property (Hurgovind and Pranjevund) are not as evidence entitled to the smallest credit. The fact that original defendant admitted the land to belong to plaintiff when examined before the Police cannot be cited by the opposite side as evidence of title, or to supply the want of evidence; and, besides, the word of a man accused of a criminal charge should not be too strictly construed; and on these grounds original plaintiff should have been nonsuited.

"In an ordinary case," the Judge proceeded, "it would have been sufficient to record the above facts, as the grounds for reversing the decision passed by the lower Court, had it not been for the disingenuous nature of the defence set up by defendant, which requires a few remarks: not only was the general issue pleaded which threw on plaintiff the onus of proof, but defendant set up a distinct and independent title of his own. He pleaded that the upper story of the shop was purchased by himself from Humabaee, who previously bought it of Jaitee woman. This Humabaee, be it observed, is the Nugurseth of the city, the principal partner in the most opulent firm in Goozerat, the reputation of which he sustains by his own personal abilities and intelligence, and of whom

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it may be said without reproach, alluding to his well-known character for caution, that he would not suffer a dumree to quit his possession unless assured of obtaining its equivalent. This individual does not hesitate, however, to affirm that he purchased the apartment from Jaitee, admitting, at the same time, that he paid her the money in small items, but of which he has no accounts, documents, or receipt of any kind, and no deed for the sale was executed. This woman is shown to be the widow of a man who died member of an undivided family, and, as the lower Court properly remarks, she could possess no title to the property, and as little could any power be exercised over it by her mother-in-law Luxmee, who was alleged to have assigned it her, though even here the deed was wanting. The evidence both of Humabaee and the woman is a tissue of falsity throughout, and the Court regrets that a man so respectable as the former, the friend and associate of European gentlemen, should have lent his name to such a scandalous proceeding as the bolstering up a bad defence; and it is not the less inexcusable that the cause was a caste dispute between the Wishun sect and the Shrawuk Buniahs, to the latter of which he belongs. This appears as follows: the suit was originally filed in the Court of the Moonsiff, Mr. Watkins, by whose decision both parties professed their willingness to abide. On the removal of that officer to Kaira, to assume the appointment of Sudder Ameen, his place was taken by Muncharam, a Shrawuk, and zealous partizan of defendants' sect. Plaintiff thereon petitioned the Judge to have the case removed, or join an associate with the Moonsiff, so as to secure an impartial

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decision: the Principal Sudder Ameen was accordingly desired to hear the case conjointly with the Moonsiff. Subsequent to this, and long before a decision was pronounced, Mr. Watkins returned, and became a party to the decision. It is much to be feared that this officer yielded his opinion to the Principal Sudder Ameen, and adopted his view of the case: it is not likely that a man of his discernment could fail to see through such evidence as was here produced by plaintiff, so clearly manufactured for the purpose of the case, and he ought not to have overlooked that the parties regarded him as an even and impartial umpire of the facts in dispute, who would counterbalance any leaning of his colleague to one particular side. Yet, not content with awarding plaintiff the land he claimed, the lower Court must go out of the way to throw on original defendant the costs of the suit, though plaintiff was nonsuited on one point, which should, in conformity with the Regulations, have carried costs against him. The reasons assigned for thus burdening defendant are eminently unsatisfactory, and afford no justification whatever for this departure from what the law prescribes: had the lower Court been, as the Judge is, dissatisfied with the defence, and thrown the costs on defendant in consequence thereof, the matter would have borne a different aspect; but no disapprobation is expressed by the Court on that head, and, from anything that appears to the contrary, it seems only that Humabaee first, and then defendant, made a bad bargain. Judgment reversed, with costs on original plaintiff."

John Warden, Esq.

From this decision a special appeal was admitted in the Sudder Dewanee Adawlut, to determine

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whether such decision was "consistent with the practice of the Courts, in refusing, without reason assigned, to allow any weight to the evidence of a person representing the family from which both parties claim to derive title, as to the party in whom the present title is vested; and in declaring that appellant could not cite as evidence of title, or to supply the want of evidence, the admission of the respondent before the Police."

A. Bell, Esq.

The case then went before the single Judge, and he decided that it *was* consistent with the practice of the Courts to do so; but on a review of judgment, which was granted, on the ground that a single Judge was not competent to decide the appeal, under the interpretation of the 25th March 1851 on Section VII. Act III. of 1843, it was recorded by the full Court, and decided, "that the Zillah Judge did not decide consistently with the practice of the Courts when he declared that appellant could not cite as evidence of title, or to supply the want of evidence, the admission of respondent before the Police." The single Judge's decree was therefore reversed, the Zillah Judge's decree annulled, and the case returned for re-trial.

Messrs. John Warden, W. E. Frere, M. Larken.

No. 2977, Special.

DHOND BUSUNGHONDA .....*Appellant,*

versus

VENKUTRAMACHAREE bin SWAMEEROYA-CHAREE.....*Respondent.*

Rupees 200.

[By Hindoo Law the duration of a Lease is not confined to the life-time of the grantor only.]

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Venkutramacharee, in instituting this suit in the Court of the Moonsiff of Haveree, in the Dharwar Zillah, represented in his plaint that his nephew had mortgaged a surw inam field to one Pandoorung, who rented it to Dhond Busunghonda, and that his nephew being dead, he redeemed it from Pandoorung, but Dhond Busunghonda would not give it up. In defending the suit, Dhond Busunghonda contended that the field had been originally rented to his brother by an ancestor of Venkutramacharee, and continued to him by Pandoorung when he took it in mortgage; and that he had laid out a large sum of money in improving it.

The Moonsiff decreed in favour of Venkutramacharee, whereupon Dhond Busunghonda appealed in the Court of the Assistant Judge, who recorded his opinion, that as the field was no longer held in mortgage by Pandoorung, Dhond Busunghonda must give it up to Venkutramacharee the owner; under which view the decree of the Moonsiff was upheld, with costs on Dhond Busunghonda.

That individual then presented a special appeal in

the Sudder Dewanee Adawlut, respecting which the sitting Judge recorded :—

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P. W. LeGeyt, Esq.

"The petitioner sets forth that he held a field from one Rooknamacharee, who bound it to him for as long as he chose to hold it. The lower Court held this was binding only on the grantor, and expired with his life: he is dead, and the heir wishes to resume and obtain a decree. Petitioner contends that the lease to him is good for life. A special appeal is certified, to try whether the lease to petitioner is in force during the grantor's life, or during his own as grantee."

On this point the full Court recorded :—

Messrs. W. E. Frere, A. Remington, M. Larken.

"The Court, having referred the lease for the opinion of the Shastree, whether the lease is valid only during the life of the grantor, find that according to Hindoo law the lease is not confined to the life-time of the grantor only, and the decrees of the lower Courts are accordingly reversed, and Venkutramacharee's original claim thrown out, with all costs on respondent."

No. 3001, Special.

SUNGAPA SANEECOPE.....*Appellant*,

versus

LINGAPA wulud BUSHETEE, deceased, his Widow and Heiress NILOWA.....*Respondent*.

[A Bond stamped after the Grantor's death is not valid against his Widow.]

Sungapa entered this action in the Court of the Moonsiff of Dharwar, to get possession from Nilowa

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of a house which had been mortgaged to him by her deceased husband Lingapa. Nilowa, for the defence, contended that the mortgage deed was on plain paper, and therefore invalid.

The Moonsiff, on a re-trial of the case, it having been returned to him in order that Sungapa might have an opportunity to prove that he held possession of the house until put out of it by the District Police Officer on a petition from Nilowa, found only a short tenancy established, and finding also that the deed had not been stamped until after Lingapa's death, he held it invalid against his widow, and threw out the claim.

Sungapa then appealed in the Court of the Zillah Judge, who decided that he had not proved his claim. "The suit is brought," it was observed, "to recover possession of the house, which Sungapa says he received from Lingapa: he has not proved that he ever received the house, or held possession of it; and it is proved and admitted that Lingapa's widow now lives in it; and consequently the Judge is of opinion that Sungapa has not proved his claim, and the Moonsiff's decree is so far affirmed as it throws out Sungapa's claim."

From the Zillah Court Sungapa came to the Sudder Dewanee Adawlut in special appeal, which was admitted, to try—1*st*, whether the Court of original jurisdiction did not depart from law, in declaring a bond to be invalid against a widow because it was not stamped till after the death of the husband who passed it; and 2*nd*, whether the Zillah Appellate Court did not depart from law and practice in disallowing special appellant's claim to a house under the same

M. Larken, Esq.

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bond, because special appellant had not proved the receipt, nor the possession of the house.

Messrs. John Warden, A. Remington, M. Larken.

The judgment in the matter of the full Court was as follows:—

"The Court consider that the word 'grantor' in Section XIV. Regulation XVIII. A. D. 1827 must be read literally; and that a bond stamped after the grantor's death is not valid against his widow; and the second point in the certificate does not therefore arise. The Court accordingly confirm the decision of the Zillah Judge, that as the bond of A. D. 1841 had not been stamped until after Lingapa's death, it must be held to be invalid against his widow, and the special appeal is therefore dismissed, with costs on appellant."

No. 3022, Special.

RUSTOMJEE SORABJEE ..... *Appellant,*

versus

ARDASEER SORABSHAH ..... *Respondent.*

Rupees 37–11–4.

[Held that the Regulations do not contemplate or admit a Suit for an Injunction to restrain from making a demand.]

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Ardaseer entered this action in the Court of the Sudder Ameen of Surat, to obtain an injunction to restain Rustomjee from demanding from him a fee called Sookree, as due on his garden. He represented that the garden was subject to a quit-rent, payable to Government, of Broach Rs. 10 per annum, in lieu of

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which Rustomjee, as Talookdar, took from his (Ardaseer's) tenant Rs. 14; and he therefore prayed that the injunction might be issued, and that the excess so levied should be refunded.

For the defence, Rustomjee pleaded that Ardaseer's name did not appear in any of the Government records, as proprietor of the garden in question; and that he (Rustomjee) had a right by prescription to levy the sookree fee on the said garden, which fee was entered in the Government records of the village, the Collector giving orders for the payment of it to him.

The Sudder Ameen disallowed so much of Ardaseer's claim as regarded the recovery of Rs. 12, stated to have been unjustly taken for three years at Rs. 4 per annum from his tenant; but decreed in his favour as regarded the injunction prayed for, on the ground that Rustomjee had not proved his title to the fee by the production of any sunnud, and that he did not show, by any documentary evidence, that when the village in which the garden was situated came into the possession of the British Government, he possessed any such right. The Sudder Ameen also took as a precedent a decree passed by the Sudder Dewanee Adawlut in Special Appeal No. 453, under date the 5th February 1833.

This decision was affirmed in appeal by the Zillah Judge, for the reasons assigned by the Sudder Ameen, and for others which were recorded as follows:—

"From the copies of documents produced in this appeal obtained from the Collector's office, it appears clearly, that in Sumvut 1855 and 1859, before this village was acquired by the British Government, the Patels possessed no such right, for among the village

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charges are only debited as Patel inam allowances Rs. 73, in two items of Rs. 23 and 50 in the first of those years, and in the second Rs. 51 only. Rs. 58 as sookree is entered therein, but apparently as an item of Government revenue. That for very many years appellant (Rustumjee) and his father have been in the habit of receiving this fee from some of the proprietors of wuzeefa lands in his village, and also from the predecessors of respondent (Ardaseer) in the possession of the garden in question, appears to be proved by the evidence adduced by appellant, and that he has against some of them obtained decrees of this Court, and the Revenue Courts, for its recovery; and that the Collector of Surat and his Assistants have in some instances interfered in their revenue capacity on behalf of appellant as regards some others among the Wuzeefadars, are facts which are equally established; but it is sufficient to observe on these points that respondent, having been no party to those cases in which appellant obtained decrees, respondent is not prevented by them from bringing his present action, nor can they be made applicable to him, and they appear to have been founded merely on prescription having been proved, without inquiry into the nature of that prescription; and the interference of the Collector and his Assistants in their revenue capacity cannot be regarded as of any authority or weight, being quite illegal, the question of right to levy this fee on the Wuzeefadars not being one that affected the Government interests or revenues, but one affecting the rights and property of private individuals, to be adjudicated by a competent tribunal. It is further evident, that since A. D. 1823 appellant had not enjoyed

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full and undisputed enjoyment of his alleged right to levy this fee, it having been frequently disputed; and when the well known original nature of this fee is considered, its receipt by appellant for any length of time would scarcely confer a prescriptive title. It was originally a gratuity paid by private proprietors of lands as compensation to the chief officer of a village for his labour and services in looking after, and generally protecting their property, and, as such, a mere voluntary recompense for services voluntarily given, or responsibilities voluntarily undertaken; but in the course of time it came to be considered by the recipient as a huk, which he was entitled to levy in virtue of his office, and by the proprietor the exaction came to be frequently acquiesced in from indolence or ignorance; but an enjoyment of this fee under such circumstances for any length of time, even if wholly undisputed, which this has not been, and if received even from the same individuals, or their direct heirs, as this has not been, can never confer a prescriptive title."

G. Grant, Esq.

Rustumjee next presented a special appeal in the Sudder Dewanee Adawlut, which was admitted, to determine whether the Regulations contemplate or admit a suit for an injunction to restrain from making a demand; and the point having been tried by a full Court, it was decided that they do not, and the Zillah Judge's decree was therefore reversed, with all costs on respondent.

Messrs. W. E. Frere, A. Remington, M. Larken.

No. 3023, Special.

DAMOTHURDASS GOMTIDASS.....*Appellant,*

versus

THE COLLECTOR OF SURAT.....*Respondent.*

Rupees 25–5–0.

[The Collector must proceed as prescribed by Chapter X. of Regulation XVII. A. D. 1827, before he can assess Land claimed to be held exempt from the payment of Land Revenue.]

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Damothurdass sued in the Court of the Assistant Judge of Surat to prevent the Collector from levying the sum of Rs. 2-8-6 annually upon him, on account of land enjoyed by him exempt from payment of revenue. The Collector answered that the plaintiff was entitled to enjoy only 5 acres exempt from payment of revenue, but that he had more in his possession; and that notice had been served on him to show cause why the land was exempt, but he had not done so, wherefore the excess had been assessed.

The Assistant Judge delivered judgment in the matter as follows:—

"The Court finds that the notice alluded to in the Collector's answer is not forthcoming; but this appears to be of less importance in the present case, as the question at issue is not whether the land which Damothurdass holds is exempted or not, but whether he has more land than 5 acres in the field called Sutario No. 426, which is admitted to be exempted from payment of revenue. The Court having caused the land to be measured, finds that the description of it given in the deed of purchase passed to the Sootars

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who presented the land to Damothurdass' ancestors as a religious gift corresponds with the actual state of the land. There is another adjoining piece of land, consisting of about 2 wusas, which the Collector asserts to be in Damothurdass' possession; Damothurdass admitting that it is so, but contending that it is not a part of the field called No. 426 Sutario, but a distinct piece of ground, held under a previously acquired and distinct right. It appears that the land is not a part of Sutario No. 426, but separated therefrom by a pathway used by foot passengers along the high-road adjoining, and that it is not cultivated land, but ground containing a well and a shed. In the present case this is sufficient: it appears from an order of the former Collector, produced by defendant, that the tenor of the notice which has been mislaid was that the additional ground belonged to the field Sutario. The piece of ground really in dispute is not a part of that field, and of course Damothurdass was not bound to appear and show title in regard to it when it was described wrongly. The Court therefore finds for Damothurdass, prohibiting the Collector from levying any assessment on the field Sutario No. 426. Costs on the Collector."

From this decision the Collector appealed to the Zillah Judge, who reversed it in his favour, on the ground that according to the report of the party deputed to measure the land, and the plan of the same, it was of greater extent than was stated in the deed of purchase passed to the Sootars, who presented it to the ancestors of Damothurdass.

A special appeal, at the instance of Damothurdass, was then admitted in the Sudder Dewanee Adawlut,

G. Grant, Esq.

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to determine whether the Judge had not acted contrary to law and practice in passing a decree against Damothurdass for a larger quantity of land than the report on which his decree purported to be based showed to be in that individual's possession; and in admitting the Collector's claim at all, the provisions of the Regulations not having been complied with by him in regard to the land in question.

On this point the full Court decided as follows:—

Messrs. W. E. Frere, A. Remington, M. Larken.

"It appearing from the proceedings in this case that the Collector has failed to prove that in levying the assessment he followed the course prescribed by Chapter X. Regulation XVII. A. D. 1827, he had no right to levy any assessment on any land the petitioner may hold in excess of the 5 bigas which the Collector admits to be his inam. The Judge's decree is therefore reversed, and the Collector is prohibited from levying any assessment on the land in question, until he has established his right to do so according to law, respondent paying all costs."

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